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Clk. Sup. Ct. U. S.

SUPREME COURT OF THE UNITED STATES.

No. ~~265~~ 1015. 3019.

CHARLES CONGDON, SAMUEL CONGDON, AND THE TENNESSEE MINING COMPANY AND AL., PLAINTIFFS IN ERROR,

vs.

JOHN GOODMAN AND YANCEY S. BLEDSOE, SCHOOL COMMISSIONERS, &c.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

GEO. S. GIDEON, Printer, 511 Ninth street, near Penn. Avenue.

Dis for want of jurisdiction

Dec 15. 1862

613

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Know all men by these presents that we, John Goodman, Yancey S. Bledsoe, and W. P. Cooper, P. L. McClary, and Jno. A. Bell, are held and firmly bound unto John Caldwell, James V. Symons, Thomas H. Callaway, E. Waterhouse, and others, in the sum of two hundred and fifty dollars, to be void on condition that the said Goodman and Bledsoe will with effect prosecute a bill this day filed in the chancery court at Benton against said Caldwell, Symons, Callaway, and Waterhouse, and others, constituting the Tennessee Mining Company, or in case of failure of such prosecution, pay and satisfy all costs and damages that may be awarded against by our said court.

Given under *my* hands and seals this 13th day of February, 1856.

JOHN GOODMAN, [SEAL.]
YANCEY S. BLEDSOE, [SEAL.]
WM. P. COOPER, [SEAL.]
P. L. McCLARY, [SEAL.]
J. A. BELL. [SEAL.]

Test: JAMES SMITH,
D. C. and M.

To the Honorable T. Nixon Van Dyke, chancellor for the fifth chancery district, presiding in chancery at Benton, Tennessee:

The bill of complaint of John Goodman and Yancey S. Bledsoe, citizens of Polk county, Tennessee, and duly elected school commissioners of the eighth civil district of said county of Polk, against John Caldwell, a citizen of Jefferson county, Tennessee, James V. Symons, who is a non-resident of the State of Tennessee, Thomas H. Callaway and Euclid Waterhouse, citizens of Bradley county, Samuel Congdon, a citizen of Polk county, Tennessee, Charles Congdon, also a non-resident, and the Tennessee Mining Company, and, humbly complaining, would show to your honor that some time in the year 1849 or 1850 valuable discoveries were made and being made in the 8th district of said county, of copper ore and other minerals, and among other discoveries valuable ores of copper were found upon the 16th section of township four south, in range five east of the basis line, in the Ocoee district, it being a section of land set apart by law for the maintainance of schools in the said eighth district aforesaid, of which your orators are common school commissioners; their discoveries were made by the said John Caldwell and James V. Symons aforesaid, some time in the year 1849 or 1850.

Your orators would further state and show, that very soon after

ascertaining that copper ores existed in said school section aforesaid, to wit, about the 4th day of February, 1850, the said John Caldwell procured the passage of an act by the legislature of Tennessee, authorizing the school commissioners of the county of Polk to lease for mining purposes any unsold school land in said county of Polk, upon such terms as in the judgment of the commissioners might be most conducive to the interest of the common schools in said county, under the provisions of said act of assembly; the said John Caldwell and James V. Symons procured the execution of a lease of the said 16th section in the fourth fractional township south, and range five east, in the Ococee district, of which the following is a true copy, to wit:

This indenture, made and entered into this 21st day of May, one thousand eight hundred and fifty, by and between Benjamin C. Dugger, James Lemmon, and Samuel Denton, school commissioners for dis. No. 8 in the civil division of Polk county, Tennessee, of the first part, and James V. Symons and John Caldwell, of the second part, witnesseth: that for and in consideration of the covenants and agreements hereinafter expressed, the said commissioners have, on this day and date above written, and by these presents doth convey and confirm to the said James V. Symons and John Caldwell, their heirs, executors or assigns, of entering in and upon the sixteenth section fractional township four south, and range five east of the basis line, Ocoee district, said section being bounded W. and S. by the lands of Benjamin C. Dugger, and east and north by Waterhouse and others, and the said Symons and Caldwell, as above stated, are by these presents secured in the privilege of searching for mineral and fossil substances to any extent they may deem advisable, but not to hold possession of any part of said land for any other purpose, except so far as water-power and wood for mining purposes may be necessary; and the contracting parties covenant and agree that no damage shall be done in or upon said lands, other than may be necessary in conducting said operations; and the contracting parties further agree, that should no mineral or fossil substances be mined or quarried, as *nau* contemplated, in the space of six months from the day and date above written, or should the mining operations cease at any one time for the space of six months, in either case it shall amount to a forfeiture of the lease, at the decision of the said commissioners, or their successors in office; and the said Symons and Caldwell, for themselves, their heirs, executors, administrators and assigns, covenant and agree to pay to the said commissioners and their successors seven per cent. of the *nute* proceeds of all minerals and fossil substances mined or quarried in or upon said section; and, finally, the contracting parties agree that the lease shall be, and is hereby confirmed, for the period of ninety and nine years from the day and date above written, on the express condition that the dues shall be promptly paid

over to *to* the said commissioners and their successors on the sales of the proceeds of the mines, and the said contracting parties have in confirmation set their hands and affixed their seals.

B. C. DUGGER, [SEAL.]
SAMUEL DENTON, [SEAL.]
JAMES H. LEWING, [SEAL.]
JOHN CALDWELL, [SEAL.]
JAMES V. SYMONS. [SEAL.]

In presence of
JOHNSTON SUIT,
RALP SUIT.

The words, and John Caldwell, six, and months, interlined before signed and acknowledged by said parties. The above and foregoing is substantially a correct copy of said lease, a certified copy of which will be produced when called for by your honor.

Your orators would further state and show to your honor, that they are advised that the lease is illegal; that the commissioners had no authority in law to execute the same, and therefore your orators feel that they are not bound by the provisions of the same. Your orators would further state and show to your honor, that said lease is very unjust and iniquitous in its provisions; that it was obtained by the said James V. Symons and John Caldwell through fraudulent representations to the said commissioners as to the true value of the mineral interest in said section; that the said James V. Symons and John Caldwell were experienced miners, and well knew the value of the minerals in said land, but that the said Benjamin C. Dugger, Samuel Denton, and James H. Lewing, were totally ignorant of the value of the same; that they had no interest in said lands, except in a fiduciary capacity, and had no authority to execute such a lease; that *the* were illiterate men, of no experience in the business of mining; especially were they ignorant of the business mining for copper, and the value of the ore, and consequently were not capable of properly attending to the interest of the children of the township aforesaid, and therefore were easily overreached by the persuasion and fraudulent representations of the said Symons and Caldwell. Your orators further charge, that the said commissioners did not understand said lease at the time it was executed; that they supposed they were getting one seventh of the proceeds of said mines for the use of the school, instead of the mere pittance of seven per cent.; that one of the said commissioners has already stated on oath, that he did not understand the terms of the lease at the time of the execution of the same; and your orators are informed and believe, that the one or both the other commissioners were deceived in like manner.

Your orators further charge, that the said John Caldwell and James V. Symons, being experienced miners, well knew that the ex-

ecution of said lease was a gross fraud upon the rights of the children of the township; that the same was unjust in its provisions, and that the said John Caldwell and James V. Symons, well knowing the injustice of such a lease, and the incompetency of the said commissioners to act in the premises, combined and confederated together, first to obtain the passage of an act of the legislature to show a color of authority for such a lease; and secondly, to overreach the said commissioners by persuading them that they had authority to act when they had not such authority; and by various false and fraudulent representations as to the true value of the interest, they, the said commissioners, were called upon thus to transfer to them, and being so combined and confederated together as aforesaid, they, by the various means aforesaid, got the said lease executed.

Your orators would further state to your honor, that said lease was executed by the commissioners without consulting the people of the township in regard to the same, and that the people of the township, who were entitled by law to the entire interest in said school section, were suddenly and without consultation deprived of the entire interest therein, except the pittance of seven per cent. for the term of ninety and nine years, or at least such is the effect of said lease; and long before the expiration of said lease, at the present rate of destruction of timber, and the rapid extraction of minerals, the rich legacies which *was* there given to the children of the township will be exhausted and gone, and they will have received nothing in comparison for the same.

Your orators would here state, that they do not know, nor can they believe, that the said John Caldwell did designedly act fraudulently for the purpose of defeating the interest of the children of said township in said lands, and that he was associated with the said James V. Symons, whom your orators are informed and believe had but little regard, if any, for the interest of the children of said township, provided he encompassed his proposes. Your orators would further state and show that so great was the disapprobation of the people of the township when they ascertained that said lease was executed, they prepared and had a petition signed by nearly all the citizens of said township to have the same set aside, and that a certain man representing himself to be a friend to the movement, got possession of said petition, and held it up, and obtaining a compromise with the lessees, Caldwell and Symons, of some other differences between them, the petition was perhaps given up to them, and no suit was entered.

Your orators would here state and show to your honor, that afterwards, to wit, on the 9th day of June, 1851, the said Symons and Caldwell sold a portion if not all their interest in said lease to Samuel Congdon, agent for Charles Congdon and associates, of New York; but who these associates are, your orators are not in-

formed, and when ascertained, they ask that they be made parties defendant to this bill.

Your orators would further state and show your honor, that afterwards, to wit, on the day of , A. D. 185 , the said Charles Congdon and associates executed a conveyance of the interest in said lease to a company known as the Tennessee Mining Company, which said Mining Company, as your orators are informed and believe, is composed of Samuel Congdon, Charles Congdon, D. H. Arnold, James S. Stowe, R. C. Green, Thomas H. Callaway, and Euclid Waterhouse, and perhaps others. Your orators do not know that they constitute a company known as the Tennessee Mining Company, and are incorporated in that name and style, having such powers as other corporations of similar character; and said Tennessee Mining Company, as your orators believe, now own not only the interest which the said Symons and Caldwell formerly owned in said lease, but also the surface of said section of school land; but of this your orators will speak more particularly hereafter. Your orators charge that the said act of the legislature of Tennessee before referred to, authorizing the lease of school lands in said county of Polk, was unconstitutional and void, and communicated no authority to the said school commissioners to lease said lands whatever, for the following reasons, to wit: 1st, the said act is a special act, and not a general law; 2dly, the said school land did not belong to the State of Tennessee, nor never did, but was given to the children of the township in which it was situate for a school fund forever, by Congress of the United States, and the State legislature had no authority to interfere with the same in any way whatever, except as specially directed by Congress.

Your orators further charge, that said commissioners had no authority to give to any person or persons any part of the minerals, or the proceeds thereof from said land, and that said lease is void on that account, inasmuch as the lease shows that the whole of the mineral is given away to the lessees, except the pittance of seven per cent.

Your orators would further state and show, that the said Tennessee and Mining Company took said lease, or the interest therein, well knowing the illegality of the same, and the fraudulent manner in which the same had been attained, and your orators are advised can obtain no protection from the same.

Your orators charge that Samuel Congdon, who has charge of the working of said mines, and the transportation of the mineral from the same, and who of right ought to have charge of the books and accounts of said company, when applied to for a settlement with the commissioners, according to the provisions of the lease, refused so to settle, alleging as an excuse, that the books of the company, and accounts of the company, were kept in the city of New York, and that in fact and in truth no settlement has been

made with said commissioners, nor has the seven per cent. been promptly paid over to them on the sales of ores, as contemplated by the terms of said lease; that no account having been stated by said company, or its agents, of the amount of the proceeds of said mine, consequently your orators have no date upon which to charge said company, or to ascertain the amount which is or ought to be due said township from said mine.

Your orators further state and show, that the said Tennessee Mining Company has been for a number of years, and still is rapidly extracting the mineral from said land, and transporting the same beyond the limits of the State of Tennessee; and that if they shall be suffered to continue so to do for a few years longer, all the most easily obtained ores, and perhaps the most valuable, will be extracted, leaving nothing but the ores which are deep and difficult to obtain, for the children of township, thereby greatly diminishing the value of said property upon the hands of said children, to whom of right the entire therein belongs.

Your orators further charge that said Tennessee Company have, at a considerable expense, perhaps some ten thousand dollars, put up a large establishment upon said land, which proved to be utterly worthless, yet that the cost of the same is set down as a charge against said minor children, in the account of gross expenditures, thereby greatly diminishing the amount properly due said children.

Your orators also charge, that several thousand dollars from the proceeds of said mines have been expended by said company in building a road down the Ocoee river, and that that amount, whatever it may be, is charged to the account of transportation; that the same, as your orators are informed and believe, was that amount of stock taken by said company in a turnpike road down said river; and your orators are informed and believe that the amount of ten thousand dollars was so expended, which your orators are advised that said company should be charged with.

And your orators further charge, and show, that some time in the year 1851 or 1852 efforts were made by the said Thoms H. Callaway, Euclid Waterhouse, and others interested with them, to have the said school section sold, reserving the mineral, and that by a combination of the aforesaid parties, Calaway and Waterhouse, through various false and fraudulent representations made by them, and those whom they had and advised to be employed to assist in getting the same effected, they, at the term of the circuit court of Polk county, 185 , obtained an order of the said court to sell said land, reserving the mineral and mining privileges as aforesaid; and afterwards, to wit, on the day of 185 , said land was sold by the clerk of the circuit court, for the sum of about seventeen hundred seventy dollars, and at said sale the said Euclid Waterhouse became the purchaser; and afterwards the

Euclid Waterhouse, on the day of , 185 , sold or conveyed the same to the Tennessee Mining Company aforesaid, as your orators are informed and believe; and your orators charge that the said Tennessee Mining Company have no property in this State except their claim in said lease and purchase as aforesaid, as they are informed and believe.

Your orators further charge and show to your honor, that said sale was made contrary to the wish of a majority of the legal voters of said township, and was obtained through fraud and gross combination and misrepresentation and confederation between the said Waterhouse and Callaway, and others, and the then acting school commissioners of said township, as your orators charge; that they are informed and believe that certain persons were employed to procure the vote of said township for said sale, and were paid for the same by or through the individuals interested as aforesaid, or some of them.

Your orators further charge, that the names of individuals in said district and township were obtained for said sale through *through* the false and fraudulent representations of the parties interested as aforesaid, and their employees, and that if said *note* had been taken, and legally, a majority of the legal voters of said township would have voted against the sale.

Your orators further charge, that the members of the present Tennessee Mining Company *is* composed partly of the same men, interested in getting up said fraudulent sale as aforesaid, to wit, the said Callaway, Waterhouse, and Samuel Congdon and others, who own a large amount of stock in said company, as your orators are informed and believe, and that all the stockholders in said company had notice of the fraudulent manner in which said sale was procured as aforesaid.

Your orators further charge, that said lands were sold with the reservation of the mineral as above stated, and that if said reservation had not been made, the lands would have sold for a much larger sum *that* it did; that in fact and in truth, by the reservation aforesaid the lands were *litterly* sacrificed.

Your orators are advised, and believe, that the court had no right, jurisdiction or authority to order such a sale, and that the same is null and void, and all the mes*en* conveyances of the same, and communicates no title to the purchaser, and that the said sale was fraudulent and void as before charged.

Your orators further charge, that long before said sale, and before said lease was executed, a shaft had been sunk upon said school section, and the material known to miners and the lessees to be copper ore was discovered and known by the said lessees, Caldwell and Symons, to be very rich and valuable, which facts were not known by the commissioners aforesaid, as your orators are informed and believe.

The premises considered, your orators pray that the said John Caldwell, James V. Symons, Samuel Congdon, Charles Congdon, and his said associates, when discovered, Thomas H. Callaway, Euclid Waterhouse, and the Tennessee Mining Company, be severally made defendants to the bill.

Your orators further pray that the said lease be declared null and void, and that the said sale of the land be declared null and void, for the reasons aforesaid, by a decree of your honorable court, and that an account be taken to ascertain—

1st. The amount and value of all the ores taken out and shipped from said mines, from the date of said lease up to the present time, and that the said defendants be charged with the same.

2d. *Secondly.* That they state and show where said ores are sold, and to whom, and at what price, and the cost of raising and transportation.

Thirdly. That they be required to produce all the books, accounts, and vouchers, and show up a full, fair, complete, and perfect statement of all the transactions of said company, from its organization up to the present time.

Fourthly. That they show the entire net profits of working said mine, from the commencement up the present time.

Fifthly. That they state and show how much of the proceeds of said mines have been expended in building or making roads, and erecting a smelter or furnace, and other buildings, and how the same has been charged on the books of said company.

Your orators further pray that an injunction be granted by your honor against the said defendants, enjoining them from removing said ores beyond the limits of the State, unless they give bond and good and sufficient security to the clerk and master of said court to account for the same, and abide by such decree as your honor may render in the case.

Your orators further pray that the defendants be required to answer specially each and every charge herein contained, in as full and ample a manner as though *the* each and every allegation was here again specially charged, and they thereto particularly interrogated; and if your orators are mistaken in their special prayer, they pray for such other and further relief as they may be entitled to under the rules and regulations of your honorable court; and they pray for general relief.

And your orators further pray that process issue as to all of said defendants who reside in this State, and that publication be made as to the said non-residents. This is the first application for an injunction in this cause.

BROWN & EDWARDS,
Sol'rs for Complainants.

STATE OF TENNESSEE,
Polk County.

On this 12th day of Feb'y, 1856, personally appeared before the undersigned, an acting justice of the peace for said county, John Goodman and Yancey S. Bledsoe, who being duly sworn, say that the facts stated in the foregoing bill, as of their own knowledge, are true, and those stated upon information they believe to be true.

JOHN GOODMAN,
YANCEY S. BLEDSOE.

Sworn to and subscribed before me the day and year aforesaid.
REUBEN KANESTER,
J. P. for said P. C.

STATE OF TENNESSEE.

To the Clerk and Master of the Chancery Court, at Benton, Polk County, Tennessee:

Let an injunction and process issue, and publication be made as prayed for in the foregoing bill, until the further order of the chancellor, upon the complainant's giving an injunction bond, with security in the sum of ten thousand dollars, and also a bond and security for costs, but said injunction to be dissolved and inoperative so soon as respondents or any one or more of them gives a bond and security in the sum of ten thousand dollars, to account for said ores and minerals, which may be removed and shipped by said company, if the chancellor should so decree against said company.

Given under my hand and seal this 12th day of February, 1856.
JOHN C. GANT, [SEAL.]
Judge, &c.

The bond, with sureties, as required by the foregoing fiat, having been taken and acknowledged before me from the defendants, the injunction directed to be issued by said is hereby dissolved and made inoperative.

Given under my hand this 28th February, 1856.
T. NIXON VAN DYKE,
Chancellor.

Filed in office, at Benton, Feb'y 13, 1856.
J. H. ALEXANDER, *D. & M.*
By JAMES SMITH, *D. C. & M.*

STATE OF TENNESSEE.

To the Sheriff of Monroe County:

You are hereby commanded to summon John B. Tipton and

Samuel M. Johnston to appear at a court of chancery to be held at the court-house, in Benton, for the chancery district composed of the county of Polk, in the fifth division of Tennessee, on the 1st Monday of Feb'y next, then and there to answer an original and amended bill in equity, exhibited against them and others in our said court by John Goodman and Yancey S. Bledsoe, school commissioners, and this they shall in nowise omit, under the penalty prescribed by law.

Witness J. H. Alexander, clerk and master at office, in Benton, the 1st Monday of August, 1856.

J. H. ALEXANDER, *C. & M.*

(*Endorsed:*)

Subpœna to answer. John Goodman and Yancey S. Bledsoe vs. John B. Tipton, Samuel M. Johnston and others. Iss'd 11th Oct'r, 1856; came to hand 15th Oct., 1856; executed on Samuel M. Johnston, by delivering him a copy of the bill and summoning him this 1st day of Dec'r, 1856.

J. C. VAUGHN, *Sh'ff.*

Executed as to John B. Tipton, by summoning and delivering him a copy of the bill, this Dec'r 23d, 1856.

J. C. VAUGH , *Sh'ff.*

STATE OF TENNESSEE.

To the Sheriff of Polk County, greeting:

You are hereby commanded to summon Samuel Congdon to appear before the chancellor at a court of chancery, to be held at the court-house in Benton, for the chancery district, composed of the county of Polk, in the fifth division of Tennessee, on the 1st Monday of August next, then and there to answer a bill of equity exhibited against him and others in our said court by John Goodman and Yancey S. Bledsoe, school commissioners; and this he shall not omit under the penalty prescribed by law.

Witness J. H. Alexander, clerk and master, at office, in Benton, the 1st Monday in Feb'y, 1856.

J. H. ALEXANDER.

(*Endorsed:*)

Iss'd May 19th, 1856. J. H. Alexander, C. and M. Executed the within summons by making known the same to Samuel Congdon on the 27th May, 1856, and delivering him a copy of the bill.

M. H. HANCOK, *Sh'ff.*

Sheriff's fee $2 00.

STATE OF TENNESSEE.

To the Sheriff of Polk County, greeting:

You are hereby commanded to summon Samuel Congdon to ap-

pear at a court of chancery, to be held at the court-house in Benton, for the chancery district, composed of the county of Polk, in the fifth division of Tennessee, on the 1st Monday of February next, then and there to answer an amended bill in equity, exhibited against him and others in our said court by John Goodman and Yancey Bledsoe, school comm'rs; and this he shall not omit under the penalty prescribed by law.

Witness J. H. Alexander, clerk and master of said court, at office, in Benton, the first Monday in August, 1856.

J. H. ALEXANDER,
C. and M.

(*Endorsed:*)

Subp. to answer. John Goodman and Yancey S. Bledsoe, school commissioners, vs. Samuel Congdon and others. Iss'd Sept., 1856.

J. H. ALEXANDER,
C. and M.

Executed the within on the 24th day of Sept., 1856, by reading the within on the 24th day of Sept., 1856, by reading the within summons to Samuel Congdon, and delivering a copy of the bill to him at the same time.

L. McLOUD,
Dept. Sh'ff.

STATE OF TENNESSEE.

Polk County, greeting, to the Sheriff of said county:

You are hereby commanded to summon John Cardwell to appear at a court of chancery, to be held at the court-house in Benton, for the chancery district, composed of Polk , in the fifth division of Tennessee, on the 1st Monday of Feb'y next, then and there to answer an amended bill in equity, exhibited against him and others in our said court by John Goodman and Yancey S. Bledsoe, school commissioners; and this he shall in nowise omit under the penalty prescribed by law.

Witness J. H. Alexander, clerk and master, at office, in Benton, the 1st Monday of August, 1856.

J. H. ALEXANDER,
C. and M.

(*Endorsed:*)

Subp. to answer. John Goodman and Yancey S. Bledsoe, school commissioners, vs. John Cardwell and others. Came to hand the 20th October, 1856, and search made, and John Caldwell not found in my county, this 17th January, 1857.

WM. PROVINCE,
Sh'ff Jeff. Co.

STATE OF TENNESSEE.

To the Sheriff of Knox County, greeting:

Summon Thomas C. Lyon to appear at a court of chancery, to be held at the court-house in Benton, for the chancery district, composed of the county of Polk, in the fifth division of Tennessee, on the 1st Monday of February next, then *are* there to answer an original and amended bill, filed in equity against him and others in our said court by John Goodman and Yancey S. Bledsoe, school commissioners; and this he shall not omit, &c.; fail not, &c.

Witness J. H. Alexander, clerk and master of said court, at office, in Benton, the 1st Monday of August, 1856.

J. H. ALEXANDER, *C. and M.*
By JAMES SMITH, *D. C. and M.*

(*Endorsed:*)

47. Subpœna to ans. John Goodman et al. vs. Thomas C. Lyon et al. Iss'd 13th October, 1856. Came to hand the 16th of October, 1856.

WM. P. CRIPPIN, *Sh'ff.*

Executed by delivering a copy of the within named bill to Thomas C. Lyon on the 17th day of October, 1856, and summoning him to appear as commanded.

WM. P. CRIPPIN, *Sh'ff.*

JOHN GOODMAN and YANCEY S. BLEDSOE, School Commissioners for Polk Co., Tenn.,
vs.
JOHN CALDWELL, JAMES V. SYMONS, Thomas H. Callaway, Euclid Waterhouse, Samuel Congdon, Charles Congdon, and The Tennessee Mining Company.

Bill pending in the Chancery Court at Benton, Polk county, Tennessee.—Amended bill, after leave of the court for that purpose first had and obtained.

Complainants would further state and show unto your honor, that since filing the original bill in this cause they have received information which induces them to believe, and they so charge, that John Caldwell aforesaid participated in and was fully cognizant of the fraudulent manner in which the lease was obtained on the said school land mentioned in the original bill; that the said John Caldwell, and perhaps James V. Symons, paid as much as one hundred dollars, or more, to Hancock and others of their services in procuring and influencing the commissioners to execute said lease upon said land referred to in the original bill, which

these complainants charge was a fraud upon the rights of the township, said moneys having been paid for the purpose of bringing about undue influence upon said commissioners. Complainants further charge, that at the Feb'y term of the county court, in the year 1850, Polk county, Tennessee, a return of an election in the 4 fractional townships, range five, east of the basis line, in the Ocoee district, for or against the sale of the school lands in said district and township, was received by the court, and appears to have failed to *to* decide either for or against the sale of said school land; whereupon the defendants, or some of them, procured the appointment of William S. Conner as a commissioner to individually receive the vote of said township relative to the sale of said school lands, and said commissioner proceeded to the discharge of said duty; and, as appears from the records of the circuit court clerk's office, a report was returned by said Conner, and he duly qualified thereto on the 13th day of February, 1850, in which said report a majority of the legal voters is made to appear as though they had voted for it, which these complainants charge is untrue.

Complainants further charge, that in the list of names set down by said commissioner as voting for the said sale of school land are many persons who were not at time of taking said vote entitled by law to vote in said election, some of whom are free persons of color, and others who were set down by said commissioner as voting for said sale were foreigners, not naturalized at the time of taking said vote, and consequently not entitled to vote, and consequently not entitled to vote in said election, and others, who had been declared infamous, were set down as voting for said sale, their disability not having been removed; all of which facts were well known to the said commissioner, and to the respondents, who purchased said land.

Complainants further charge, that many of those whose names appear in the list returned by said commissioner as voting for said sale were placed in said list, and set down by the commissioner himself, without any consultation with said persons in regard to how they would vote; and these complainants charge that if they had been permitted to place their own names in said lists they would have voted against the sale of said school land.

Complainants further charge, that the report of said commissioner is greatly untrue and erroneous in these respects, which induces complainants to believe, and they so charge, that the said commissioner was hired by respondents who purchased the land at the said sale, and that he was paid either directly or indirectly by them to make a report favorable to the sale of said land.

Complainants further state and charge, that the original report of William S. Conner, commissioner as aforesaid, cannot be found in the office of the clerk *of the clerk* of the circuit court of said county,

and these complainants believe, and so charge, that the same has been fraudulently taken therefrom, as from it, as they are informed, it would appear that many of the signatures upon said report as voting for said sale were placed there not by the voters for themselves, but placed there by the said commissioner, and in his handwriting, and that said signatures are forgeries.

Complainants further state, that at the time of filing the original bill in this cause they could not find the report of the clerk of the circuit court for Polk county, Tennessee, in regard to the sale of said school land, but that since that time, having seen said report, they find from the same that Euclid Waterhouse, Thomas C. Lyon, Thomas H. Callaway, John B. Tipton, and Samuel H. Johnston, became the purchasers of said school section at the sale thereof, with a reservation of what purported to be conveyed to Symons and Caldwell by the lease mentioned in the original bill.

Complainants further charge, that the original purchasers of said land, Euclid Waterhouse, Samuel M. Johnston, John B. Tipton, Thomas H. Callaway, and Thomas C. Lyon, combining and confederating together with Samuel Congdon, agents of Charles Congdon, of New York, sold the interest which they had obtained by said fraudulent sale of the said school land to the said Charles Congdon, of New York, and that after the payment of the purchase-money into the Branch Bank of Tennessee, Athens, by the said Charles Congdon, through his agent, the said Samuel Congdon, a grant, No. 7,339, was issued by the State of Tennessee, dated the 28th day of February, 1853, granting to the said Charles Congdon and heirs forever all the interest which the original purchasers aforesaid obtained by virtue of their said purchase at said fraudulent sale, with the reservations therein mentioned, which said grant is in possession of some of said respondents, and complainants pray that they be required to produce and show said grant, with their answers to this and original bill in this cause.

Complainants further charge, that the said Samuel Congdon acted as agent of the said Charles Congdon aforesaid, in the purchase of said land, and had full knowledge of the fraudulent manner in which the vote of said township had been procured and brought about, and of the fraudulent character of said report of the commissioners, and also knew that the title to said land would be litigated and contested.

Complainants pray that the respondents be required to produce, state, and show, what sort of conveyance was made by the original purchasers of said school land to the said Charles Congdon, and when said purchase was made, and at what price, and how the same was paid, and that they further state and show what representations they, or either of them, made to the said Charles Congdon, or his agent, the said Samuel Congdon, in regard to the man-

ner in which said sale had been brought about, and as to the manner in which they obtained the interest which they professed to sell to the said Charles Congdon, and let them also state what representation they may have made to the said Samuel Congdon, agent as aforesaid of the said Charles Congdon, of the probability of there being litigation about the title of said land.

Complainants further pray that respondents be required to state and show how much money or property they paid out, or how much credit they may have given to parties already indebted to them, for the purpose of procuring and influencing the votes of the people for the sale of said school land as aforesaid, and to whom said payments were made as credits given, and particularly how much they paid, or agreed to pay, the said commissioner, William S. Conner, for his services in making said report aforesaid, and procuring said vote.

Complainants further state they are informed, and believe the same to be so, that the respondents who originally purchased said land hired, or otherwise influenced persons not to vote bid against them at the sale of said land, and complainants pray that the respondents answer and state how much money was paid by them for that purpose, or agreed to be paid, and to whom.

Complainants pray that upon the final hearing of this cause, that all right and title which the said Samuel M. Johnston, John B. Tipton, Thomas H. Callaway, Thomas C. Lyon, and Euclid Waterhouse, or their vendees, may have acquired by virtue of said sale, be divested out of them, and vested in the people of the said township, as it was before the said sale; that said sale be declared null and void.

Complainants further pray, that the lease heretofore referred to as executed by said commissioners to James V. Symons and John Caldwell be declared null and void and of no effect, and that the entire fee simple title to said lands be declared in the children of the township, as it originally was before the execution of the lease, or before the sale of the same; and complainants pray as they have heretofore prayed, and for general relief, and that the said John B. Tipton, of Monroe county, Tennessee, and Samuel B. Johnston, of Monroe county, Tennessee, and Thomas C. Lyon, of Knox county, Tennessee, be made parties to this and the original bill, and that they, together with the other defendants, be required to answer all the material allegations in this and the original bill on oath, in as full and complete a manner as though each and every allegation therein and herein contained were here again set forth, and they thereto particularly interrogated, and that copies of this amended bill issue to all of the defendants herein named, and that copies of the original bill, together with copies of this amended bill, issue to such as have been made parties to this bill,

and not mentioned in the original bill, and that all necessary process issue.

JOHN GOODMAN,
YANCEY C. BLEDSOE,
By R. M. EDWARDS, *Sol.*

GEORGE BROWN, and
R. M. EDWARDS,
Sols. for Complainants.

(*Endorsed:*)

Amended bill. John Goodman & Yancey S. Bledsoe vs. John Caldwell, The Tennessee Mining Company, et al. Filed in my office, Sept. 18, 1858.

J. H. ALEXANDER, *C. and M.*
By JAMES SMITH, *D. C. and M.*

The separate answer of Samuel Congdon to the original and amended bill of complainants filed against him and others in chancery court at Benton, Tennessee, by Yancey S. Bledsoe and John Goodman, common school commissioners.

The respondent, Samuel Congdon, now comes, and saving and reserving all benefit of exceptions, and for answer to said bill, answering says: He was not a resident of Tennessee, or acquainted with any lands in the 8th civil district of Polk county, in the years 1849 or 1850, except as will be hereafter stated, or of any discoveries made of copper ores in said district, but is informed and believes that the first discoveries of valuable copper ores in said section of country were made in the year 1851, at what is now known as the Hiawassee mines, but said mines is not situated in the 16th section of township four south, in range five east, of the basis line, Ocoee district, being the land in dispute. Said Hiawassee mine is about one mile and a half from the mine or the land in question. It is untrue that either in the year 1849, or 1850, as this respondent is informed and believes, that any valuable discoveries were made of copper ores on the section of said land described in complainants' bill.

This respondent first came to the Ducktown region of country in the year 1851, and in that year this respondent, as hereafter stated, under the defendants Caldwell and Symon, and under the lease complained of in the bill, did, by mining, discover valuable ores of copper on said school land. This respondent does not believe that on the 4th day of February, 1850, the time of the passage of the law complained of, that either said Caldwell or Symons, or any one else, *known* or had ascertained that copper ores existed on the land in dispute. At that time no test had been made to *frame* the existence of copper ores, as respondent is informed and

believes; but respondent believes the said Caldwell and Symons were of the opinion that copper ores would be found on said land by proper mining for the search of the same, and having such opinion, they no doubt for that reason took the lease complained of; but in this opinion as to the finding of copper they might have been mistaken, as is very often the case, and has so proven in many instances in the mining operations for copper in Tennessee.

This respondent has no doubt—but of this he has no knowledge—that both Caldwell and Symons were desirous and willing that the law complained of should be passed, and that the said Caldwell and Symons, one or both, done what they fairly could to have such a law passed as would permit the unsold school land to be leased in order to have them tested for copper; but while respondent believes this to have been the feeling of said parties, he equally believes that the people of said district and others participated in the like state of feelings for very proper and obvious reasons. This respondent, from information and belief, denies that said Caldwell and Symons framed the passage of said law; and this respondent further denies, as he is advised, that even if said persons had been alone sufficiently potential to have procured the passage of said act, that the act would therefore have been invalid. Respondent believes, having no knowledge on the subject, that Caldwell, and it may be Symons, intended to try and obtain a lease on said land in the event of a law passing authorizing the leasing for mining *persons*, and in this respondent denies they were guilty, as he is advised, of any fraud in fact or in law.

This respondent further answering, says he admits it to be true that on the 21st day of May, 1850, under and by virtue of the act of the 4th of February, 1850, the defendants, Caldwell and Symons, did take the lease set out in complainant's bill. Respondent admits the lease as set out to be a correct copy of the original except the word "have" in one place in the bill is used instead of "*bark*," as it reads in the original. Respondent in this connection avers, that on the 6th day of July, 1850, the lessors and lessees mentioned in said lease appeared in proper person before the clerk of the county court of Polk, the county in which said land is situate, and duly before said officer acknowledged the execution of said lease. Said lease was certified by said officer and registered in the register's office of the aforesaid county, on the said 6th day of July, 1850; all which fully appears by the certificate of the said officers on the original lease. A true copy of said lease and certificates is filed with this answer, marked Exhibit No. 1, and prayed to be taken as a part of this answer.

This respondent is advised that the lessors in said lease, as common school commissioners, had full power and authority in law to make said lease, and that the same was obligatory upon the people of the township for the maintainance of schools, in which said section of land had been set apart under laws in that behalf. But re-

spondent is advised that the validity of said lease is a question of law to be decided by the court, and that it would be improper in an answer to go into an argument to show the legality of the same.

This respondent, in answer to the charge of the alleged iniquitous provisions of said lease, says he has no knowledge of any higher rate than one seventh of the net proceeds being to *lefons* in mining leases. It is the understanding of respondent that the United States in reference to her mineral lands, under the laws of Congress, does not have so large a reservation in her favor. This respondent is free to say, and he verily believes, that the provisions in said lease in behalf of the lessors are, in his belief, liberal and fair—more than usual in such cases.

This respondent denies that said John Caldwell and James V. Symons were experienced miners, and in fact no experienced miner, however able, could have certainly determined in his mind the presence of copper ores in said land, from its surface indications. The surface indications did lead to the opinion, that from the iron and rock, that mineral ores of some kind would be found by mining; but whether these ores would prove to be copper, zinc, lead, or iron, could alone be determined by an actual test, and the history of mining operations.

The United States and Europe abundantly prove that the most skill and ability *borne* of by the most confident belief, have been doomed to disappointment after the incurring of heavy expenses in the search of the supposed mineral.

And this respondent further answering as to the charge of Caldwell and Symons, knowing the value of the mineral in said land, says he has no hesitation in saying the charge is untrue; no miner, who has devoted his life and the whole *engeries* of his mind to mining pursuits, could have known in advance of the sinking of shaft, and the discovery of the mineral itself having tested its richness and quantity, could have known the value of the mineral interest in said section of land.

This respondent further answering, says it is true, as he believes, that the common school commissioners, Duggen, Denton and Lewing, were ignorant in, and had no experience in the business of mining for copper, or any other ores, as he believes; but if it is meant to charge that their mental capacity, contradistinguished from their mining skill, was so weak as not to enable them to act understandingly, and make such a contract as would protect the interest of the township, then the charge is untrue. They not only acted, as is shown by the provisions of the lease, with judgment and caution, but, as this respondent is informed and believes, having no personal knowledge of the fact had in the lease, they gave the concurrence of the people of the township in this action. And this respondent here denies that said lease, in morals, justice or law, is invalid, be-

cause said commissioners were ignorant of, and had no experience in mining operations. This respondent admits it to be true that they had no interest in said land, except in their judiciary relation; but respondent insists that in the character of common school commissioners, acting for said township under the laws then existing, they had full, legal power and right to make the same without counselling any of the people of said township, or even in opposition to their wishes. This respondent is advised, that the people of the township having elected them, they had full power to discharge all the duties and trusts that election imposed, according to the best of their judgment, and even under no obligation to consult the *cunjvgale* judgments of their electors in order to determine what their judgment or action in a given question should be; but this is a question of law for the honorable court.

Respondent further answering, states he has no knowledge or information on which to predicate a belief as to whether the lessors in said lease made any false or fraudulent representations to the commissioners as to the value of the mineral interest in said lands, or made any other false or fraudulent representations; but this respondent, for the reasons he has before stated, does not believe said Caldwell or Symons, *are* either of them, could have made any such representations as charged, because they could have known nothing of the value of said mineral until after testing. Respondent states that under said lease the land was tested, and in September, 1851, for the first time said land, after great expense, was found to contain copper ores in limited quantities. This kind of ore so found of itself would not be valuable; it is generally in limited quantities; it is the yellow copper that renders a copper mine valuable, and with a view to ascertain whether or not said yellow copper ores exist on said land, operations have been carried on during the last eighteen months, at a heavy expense to the present owners of the land, but as yet no yellow copper has been found in paying quantities, and if said yellow ores are not found in remunerating quantities, the mine and land in question will be all comparatively little value. And respondent in this connection will state that the search after these yellow ores, and the expenses thereby *concurred*, were necessary and proper in order to bring to light the mineral value of these lands, and in reference to which hereafter more will be said.

This respondent further answering, states that he had nothing to do in taking said lease, nor was he in way connected with the same, and knew nothing of the existence of said lease until long after it was taken. When and how he became connected with said lease will be hereafter explained; but respondent is bound to say he does not believe the commissioners could have misunderstood its terms; they are plain and unambiguous, and, as respondent has before stated, very favorable for the lessors. Seven per cent.

of the net proceeds that might be made out of so doubtful and hazardous an undertaking was a fair and liberal proportion. Respondent is misinformed as to what one of the commissioners may have stated under oath, but, from the reasons before stated, does not believe that either of them were deceived or defrauded into the execution of said lease.

The respondent further answering the repeated charges about fraud and iniquity in the provisions of said lease, and the procuring the passage of the law complained of, says he denies, as before said, that the provisions of said lease are unjust or iniquitous, or that said Caldwell and Symons, as he believes, procured the passage of said law, or aided in procuring its passage, with the fraudulent intents inferred and charged in the bill, or that they confederated with others for such a purpose. Respondent has before in substance said, and here repeats the same, that it may be true that said Caldwell and Symons, in common with others, desired the passage of the law authorizing school lands unsold to be leased for mineral searches and developments; and respondent believes such to have been the fact, but this respondent does not believe, from the reasons hereinbefore stated, that the said Caldwell and Symons, under color of such law, aimed to overreach the commissioners into making the lease, as charged, or to deceive or perpetrate any fraud upon them or the interest of the people of the township, nor does respondent believe said lease was procured to be executed by said commissioners, by persuading them they had authority to act, and by false and fraudulent representations as to the true value of the interests said commissioners were called upon to transfer to the *leasor*. And this respondent further answering says, it is untrue that the people of the township, after they had heard of the execution of the lease, were so dissatisfied that they prepared and had signed a petition, as charged and for the purpose stated; no such petition ever came to the knowledge or information of respondent for any purpose of the kind indicated in the bill, but after the sale of the interest derived under the lease was made by the lessors, as will be hereafter stated, the counsel for the parties selling the lands, as well *as well* as the counsel for the parties selling the lease, deemed it the best way to get rid of said lease; that the same was an improper charge upon the land which had been ordered to be sold by the circuit court, and as a means of arriving at that, a petition was started, to be signed by the people of the township, to have said lease decreed invalid. This effort to do *do* away with the lease produced some dissatisfaction among the people of the township, and this respondent agreed to take the land with the incumbrance of the lease, and the whole charge about a person getting possession of such alleged petition, holding it up and claiming a compromise of the difficulties stated, is untrue.

This respondent further answering, states, in May, 1851, he,

acting as agent for Charles Congdon and associates, had made arrangements with the parties interested, for the purchase of the interest of the lessees in said lease; and also, some time after, for the purchase of the section of land from the purchasers thereof, the same having been previously sold as common school lands, under a decree of the circuit court of Polk county, made at its February term, 1850, and Euclid Waterhouse, Thomas C. Lyon, John B. Tipton and Samuel Johnston became the purchasers of said school section, subject to the interest that may have accrued to Caldwell and Symon under the lease referred to. The petition referred to by respondent, and the only one of which he has any information, was got up after this purchase, and for the reason stated, said lease was believed not to have been an incumbrance on the land in the hands of the purchasers, under the sale ordered by the circuit court, but it was insisted to be obliga*tely* on them, and the matter of the petition was abandoned.

This respondent further answering, states that he, as agent for Charles Congdon and associates, on the 9th day of June, 1851, became the purchaser of the interests of said Caldwell and Symons in the lease complained of, and took an assignment of said interest under the lands and sales *of sales* of said lessees, which assignment was duly proved and registered in Polk county, on this 6th day of October, 1851; a copy of the same *as* filed with this answer, marked Exhibit No. 2, and prayed to be taken as part of the same. Respondent here avers, that at the time of his purchase, said lease was in existence and claimed as a lien or incumbrance on the land in the hands of the purchasers; its validity, or rather the question whether it was binding on the purchasers of the land, was then pending before the chancery court at Athens; and this respondent is advised that the honorable chancellor, on full argument, had intimated an opinion of its entire validity. The purchase was made for Charles Congdon and associates; said Congdon's intention was to form a company, and hence the term associates; but no such company was formed until the Tennessee Mining Company was formed. Respondent has not by him at the time of preparing this answer, the *crinteras* of *perelurs* of the fee simple made of the purchas*es* under the *heinee* for sale, made by the circuit court, before referred to, but believes it was made in the fall following the purchase of the leasehold interest of Caldwell and Symons. He states the consideration paid for said lands, exclusive of the thousand dollars for the lease, was fifteen thousand five hundred and seventy-seven dollars and seventy-nine cents. Charles Congdon thus being the purchaser*s*, as the benefit of said purchase was assigned to him, and he became responsible for the amount; the land was bid off as by said purchasers, and he paid the amount of the same and its accrued interest, and the governor of the State of Tennessee, on the part of all the moneys being duly paid into the branch of the Bank of Tennessee, at Athens, on the

2d day February, 1853, caused a grant of the State of Tennessee to issue to the said Charles Congdon for said section of land, a certified copy of which is hereto appended, marked Exhibit No. 3, and filed with this answer, and prayed to be taken as part of same. Thus said Congdon, having fully paid the same for which the land was bid off, and also the considerations paid to his vendors, became clothed with the full legal title for the full and valuable consideration stated. Said section *sales* at the sale, under decree of the circuit court, for the sum of seventeen hundred and seventy dollars, paid by said Congdon before the issuing of the grant to him, and being a sum largely over the amount of which said lands were valued by the persons assigned to *to* that duty, under the laws providing for the sale of common school lands, the balance of the fifteen thousand five hundred and seventy-seven dollars and seventy-nine cents was paid by said Congdon to his vendors.

And this respondent further answering, states that said Charles Congdon being thus the owner in fee of the land and the assignee of the lease thereon, the Tennessee Mining Company, incorporated by an act of the general assembly of the State of Tennessee, was formed, and said Congdon, by his deed of conveyance of the 22d of November, 1852, and duly proved, registered in the county of Polk, Tennessee, on the 11th day of November, 1853, conveyed all his interest, as assignee of said lease of Caldwell and Symons, to said corporation, said Charles Congdon being one of the corporation of said company. A copy of said conveyance is herewith filed, marked Exhibit No. 4, and prayed to be taken as a part of this answer. And the said Charles Congdon having conveyed the interest under said lease for the consideration of one thousand dollars, as before stated, to said corporation, did, by his deed in fee simple, dated 12th September, 1853, conveyed to said corporation in fee simple, with general covenants *numenmls*, the section of land described in the bill mentioned, for the full and valuable consideration of fifty thousand dollars, which has been paid by said corporation, and said deed is duly proved and registered in said county of Polk, on the 11th day of October, 1853. A copy of said deed is filed with this answer, marked as Exhibit No. 5, and prayed to be taken as for *of* the same. The said corporation so purchasing was, at the time of purchase, composed of Charles Congdon, and this respondent, Samuel Congdon, who owns an interest with said Charles Congdon, Daniel H. Arnold, George C. Cornell, Augustus C. White, Andrew E. Douglass, Septimus Crookes, Benjamin H. Mronsford and Henry H. Baldwin. The corporation in interest may have changed since then, unknown to respondent. The defendants mentioned in the bill, D. H. Hondd, James S. Stone, K. C. Green, Thomas H. Callaway and Euclid Waterhouse, have no interest in said corporation, or incorporation, or in said before mentioned purchases, so far as this respondent is informed or has

knowledge. This respondent further answering, states, as he is advised, that he is not called on to make any answer to the various reasons specially set forth by complainants to show that the law of the 4th of February, 1850, is unconstitutional, and that the lease complained of is void; all these reasons are matters of law, and to be decided by the court; but respondent is advised that complainant is mistaken in his view of the law. Respondent again insists, in answer to the repeated denial of complainant as to the power of the commissioners, that, as advised, they had full power to make the lease in question, and that all its provisions are valid and binding on said township represented by complainants. This respondent, further *answer* here as to his knowledge of the land in question, states, that the first time he ever came into the State of Tennessee was in October, 1850; he spent a few days in Athens, McMinn county, and then went to where the Hiwassee mine now is, and staid some two days there, and then returned to Savannah, State of Georgia. At this time there was no mine at what is called the Hiwassee mine, nor no persons there at work; but it was then believed there was copper at said place where said Hiwassee mine is now situated. Respondent's object was to examine said Hiwassee property; he left after he had so done. Respondent again visited the Hiwassee property in February, 1851; returned to Athens and remained until June, 1851, and then settled on the Ducktown country. This respondent expressly denies that he had any knowledge or information of the lease complained of until long after it was taken, nor had he any knowledge of said lease until after the decree of the circuit court of Polk county for the sale of said land. He denies all the charges offered and combination in said bill contained as to him in this behalf, or in relation to said lease and law of 4th February, 1850. This respondent further answering, states that Charles Congdon, for whom this respondent acted, lived in the State of New York, and never was, as this respondent believes, in the Ducktown region of country until the winter of 1854–'55, and neither *new* or had information, as respondent believes, of any of the fraudulent acts charged, if said acts of fraud ever had any existence except in the brain of complainants.

And respondent further answering, states that the corpora*tions* before referred to as composing the Tennessee Mining Company live in the State of New York, except this respondent, and respondent feels confident knew nor heard nothing of the fraudulently alleged acts and doings so roundly and freely charged in said bill. Of course the title-papers would have informed them that there had been a lease given, and the same had been purchased, and that Charles Congdon was at the sale *of* the purchase of said corporation, the legal holder of the lease and the fee simple of the land. His, said Congdon's title-papers evidenced this, and respondent be-

lieves they had no information other than that afforded by the title-papers as to the lease or the fee of the land.

This respondent further answering, states that it is positively untrue that the Tennessee Mining Company have any interest in or have expended one dime, much less ten thousand dollars, in the large establishment mentioned in the bill, by which establishment is meant the smelting works erected in Ducktown; said work was altogether a private enterprise, and instead of proving a failure, has worked well and fully realized the expectations of its projectors.

This respondent further answering, states to the honorable court that on the discovery of copper ores in the Ducktown region of country, where the land in dispute is situated, no road then was in existence, and for some time after, of a character that would allow of the hauling or transporting the ores mined to market. Ducktown is situated in a section of country entirely hemmed in by mountains, and no suitable wagon road leading from there to where the ores would have to be shipped for market, there being no market for the sales of ore in Ducktown, or, at the time of making of the road complained of, any smelter for refining the ores or separating the worthless portions from the more valuable, so as to lessen the cost of transportation. Under such a state of things it was absolutely necessary that a road should be opened through the mountains, so as to admit of the transportation of the mineral ores. The parties owning mines and mine properties in that country took the matter into consideration; the result was the opening of a road from Ducktown down the Ocoee, a distance of twenty miles; this individual and immense amount of labor *commensurate* heavy expense. It was deemed that the parties to be benefited should each bear something like a proportionate expense. The Hiwassee mines contributed ten thousand, and five other mines in proportion to their capital and business; the Tennessee Mining Company's alone on this principle deemed to be four thousand dollars, which was paid by said company, and, as respondent insists, properly; and it and all other sums necessary and proper to be expended before any profits could be realized, must be reimbursed before any dividend could be declared among the stockholders. This sum of four thousand dollars and other necessary sums expended in mining, and to make the operations productive, had and ought to be refunded, or made available before said company had any dividend or profit to declare. Said four thousand dollars is not charged against complainants, but is a charge against said company, and also complainants; on the principle above declared, it would have to be repaid before any profits would accrue. The whole sum expended in opening said road was about twenty-eight thousand dollars, all which was paid by said seven mines, except the amount of a private subscription, to the extent of twelve or fifteen hundred dollars.

Respondent further answering, states that the sale of the school

land in dispute was ordered in February, 1850, and was actually sold on the 26th July, 1850. Respondent has before shown that he was never even in the State of Tennessee before October, 1850. Both at the time of taking of the vote for the sale of school land, the time of ordering its sale, as well as at the time it was sold, this respondent was not cognizant of any of the proceedings relative therefor, and had no agency direct or indirect in those proceedings, either as his own account or agent for Charles Congdon, or any one else. Nor had respondent, at the time of his purchase of the lease, and also of the fee in the land, as he has before stated, any knowledge or information of the alleged *funds* and devices used to procure a sale of the school land, or to procure the lease, or to procure the voters of the township to vote for a sale, or of illegal votes having been taken in the ascertainment of the sense of the voters, as to being for or against the sale of the school land; nor does respondent for one moment believe that Charles Congdon had any such knowledge or information; neither had respondent, nor does he believe Charles Congdon had any knowledge or information at the time of the purchase of the lease and fee in said land, that there would be, or was likely to be, any litigation as to the title of said land or lease; the purchase was made, money paid, and conveyances taken as before stated, and all without any notice of the alleged fraud and threatened litigation; and this respondent believes the same of the purchase of the Tennessee Mining Company, and that it paid the purchase-money aforesaid, and took a deed in fee, without any notice of said alleged frauds or threatened suits. Therefore this respondent relies on the defence of purchaser for a valuable consideration, without notice as to the said Charles Congdon's purchase, and also as to the purchase of the Tennessee Mining Company, and prays the same benefit of the same by way of answer, as if formerly set up by plea.

And this respondent further answering, states that he knows nothing of, and has no other information other than as derived from the bill of complainants, of the charge of fraud and fraudulent conduct in Callaway, Waterhouse, and all others therein charged; respondent does not believe those charges; and if true, denies that Charles Congdon or the Tennessee Mining Company, or respondent, could be affected thereby; but if to be affected by them, he holds complainants to strict proof.

This respondent has before herein given the names of the corporation of the Tennessee Mining Company; they are shown to be all non-residents, and this respondent feels confident that none of them were in any manner concerned in getting up or procuring the sale of the school land, or that they, or either of them, had any knowledge or information of the alleged misrepresentations and frauds in said bill of complainants in their behalf.

This respondent further answering, states it is true that said

lands were sold subject to the lease complained of, but this respondent denies, that at the time of its sale in July, 1850, it would have sold for a larger sum than it did, to wit, seventeen hundred and seventy dollars, had it not been sold with the reservation, or, more properly speaking, subject to the lease. Respondent is fortified in this denial, from the fact that no discoveries of copper had been made on it at that time; that men sworn to value the land had only valued it to the sum of four hundred and twenty dollars, but there being a possibility that it might contain copper, it was sold for more than four times its agricultural value.

This respondent is well acquainted with said land; has examined it well; is conversant with all the shafts sunk upon it, and the time when done, and all these shafts have been sunk the 26th July, 1850; if there are any other shafts, respondent has never seen them.

This respondent, himself, after he became the purchaser of the lease, sunk the first shaft that was sunk on said property, and it was under this respondent's superintendence, after the purchase of the lease and fee, that shafts were sunk, and the first copper ore that ever respondent saw on said land was obtained from one of these shafts, in the month of September, 1851, and this respondent feels confident that no copper ore was found on said land before this period.

This respondent now *have* stated and shown unto your honor, that after the sale of the school land had been ordered, the same been noticed and advertised for sale, the clerk of the circuit court of Polk county was served with an injunction, which enjoined him from selling said land, so as to dispose of the interests of Caldwell & Symons in the lease before stated. The clerk sold said lands; therefore the lease was publicly read as well as the injunction and said land was sold and purchased subject to the interests that may have accrued to said lessees under the lease. The injunction issued out of the chancery court at Athens, on the prayer of a bill filed by them in said court, the object of which was to set up their said lease and prevent any sale, unless subject to it. The common school commissioners, Dugger, Lewing and Denton, were defendants to said bill, and the purchasers were brought in amended bills; and the purchasers, Lyon, Callaway, and the others herein before named, filed their cross-bill on the said Symons, Caldwell, &c., the object of which was to have said lease declared void, &c. A full and complete transcript of said bill will hereafter be filed, and prayed to be taken as part of this answer. Respondent files now, with his answer, a copy of the final decree in such bill, marked Exhibit No. 6; and in said two causes such proceedings were had, that at the August term of said chancery court, 1852, the complainants in the original bill dismissed the same, and the complainants in the cross-bill did the like.

This respondent is informed, and believes the fact so to be, that during the progress of said cause, as will be shown by the proceedings of the same, the opinion of the chancellor, so far as pronounced, was in favor of the validity of the lease.

This respondent further answering, states that the clerk of the circuit court of Polk county made his report to the October 1850, of said court, that he had sold the lands, &c., subject to Caldwell and Symon's lease, and also with a special reserve of the profits arising from said lease to the school commissioners, and their successors in office, for the use of the township, and that the parties before herein named became the purchasers at the sum stated, &c., &c. The honorable court ordered at said term, that all further action in relation to said sale be suspended for the future order of the court. Owing to the issue once of the injunction at the prayer of Caldwell and Symons, before alluded to, at the October term, 1852, of said circuit court, the proceedings for the sale of said school land came on for final order and decision. The report of the clerk to the October term, 1850, was confirmed, and the parties ordered to stand in the attitude as though the injunction alluded to had never issued.

The respondent here files a full transcript of the proceedings in the circuit court, and also in county court of Polk, in reference to the sale of the lands in dispute; said transcripts are marked Exhibits No. 7, and prayed to be taken as a part of this answer.

Now this respondent respectfully insists, that the first decree of the circuit court of Polk county, in October, 1852, said court having full jurisdiction in the premises confirming said sale, being unappealed from, no writ of error being brought, or any bill of review filed to reverse said decree, the same is final and conclusive, and cannot now be renewed, altered, reversed, or set aside; and this respondent sets up and relies on said decree as a bar to all the relief sought by complainants' bill, except as to an account for the one-seventh per cent. of the net proceeds of said mines reserved under the lease complained of.

And respondent prays to have the same benefit of said decree to the extent insisted on by way of answer, as if formally plead; this respondent averring that more than three years have transpired since the rendition of said decree, up to the time of the filing of complainants' original bill.

This respondent further answering, states that the timber has not been destroyed in the sense used in the bill, but has been used necessarily and properly for carrying on the mining operations, but not destroyed or wasted, and the natural growth of timber is such as in the opinion of respondent to be amply sufficient for mining purposes through all time. As to the charge about destroying the value of said land, by extracting all its valuable ores, this respondent states that for about the last eighteen months, the

mining operations had not covered expenses; the ore that has heretofore been taken out, sold from said property, has consisted of what is termed and known as the black oxyde of copper. This character of copper generally lies nearer to the surface than the yellow ores of copper, or what is known as the yellow sulphuret of copper; but the black oxyde is always uncertain as to quantity, and hence copper property not to contain the yellow ores is never *eslunoled* very highly; but when this character of ore is found in a strong lead, and at proper depth, the mine is then considered much more valuable; and to have a permanent and durable copper value property attaching to it, in order to prove the property in question, and save its real or permanent value in market, ascertained by *deodofing* the yellow sulphuret of copper, if it existed on said property, which was believed to be the case, some eighteen months since a shaft was commenced being sunk in search of it. Up to this time it has progressed to the depth of 180 feet; judging from present indications, it might be from some eight to twelve months' time before yellow copper may reasonably expected to be cut, which will be at the further supposed depth of eighty feet. These explanations or efforts to demonstrate the true character of the mineral value of said property have been gone into and are being presented with the utmost good faith. Such tests or similar ones would have to have been made in the lands of any owner, as he desired to know, and bring to light and observation the fair and reasonable marketable value of the property in question. This work has cost necessarily a very large sum. The company, not including the first cost of the property, have expended in opening it, improving its value, and in efforts to test its real mineral worth, about fifty thousand dollars more than they have received from the proceeds of sales of ore taken from it. Thirty-five thousand dollars out of this fifty thousand was actual money paid into said company by its stockholders, and expended as stated. If the yellow copper is found as stated before, in all probability, at the expiration of the lease the copper will still continue to exist.

It is untrue that the Tennessee Mining Company have no property in this State, except the lease and the property in question; independent of this, they have constantly on hand mining materials, machinery, mules, horses, oxen, &c., &c., of some twenty thousand dollars' value, independent of the large investments made for building, improving said property, &c., &c., which of course would constitute a charge on it. It is true that respondent has charge as superintendent of the Tennessee Mining Company—of the mine, its working, and transportation of its ores, &c.; but the books, accounts, and papers of said company are in charge of Charles Congdon, who is its treasurer. It is untrue that respondent has refused, when applied to, for to settle with the common

school commissioners according to the provisions of said lease referred to in the bill; but, on the contrary, from time to time, he has freely conferred with said commissioners informal, and conversed with them as to how the work was progressing on the property, and the profits that had and would probably accumulate under the lease. During the year 1854, this respondent paid at divers times the sum of $1,056 63 to teachers in said township, on the common school commissioners' orders; and in the year 1855, in like manner, he paid out the sum of $1,043 37; making together the sum of twenty-one hundred dollars. This being seven per cent. on the sum of thirty thousand dollars, declared as a dividend by the company, being the only dividend that has been declared. These payments were all made before the present complainants were elected, and were paid on the orders of their predecessors. The present complainants, or rather John Goodman and Yancey S. Bledsoe, have never applied to respondent for any settlement or examination of books or accounts; they, with one George M. Coleman, were elected in February, 1856, as he recollects; said Coleman, as respondent has been informed, refused to join with them, but the first of their acts was to file the present bill without *mone*, notwithstanding the charges in said bill to the contrary.

Respondent will here state, that this is the only company who have, so far as he has information, declared a dividend in the Ducktown region of country. Respondent further answering, says, that on the 1st March, 1854, a law was passed declaring that the lessees of mineral interests in the school lands should pay the rents of the same to the county trustee of Polk county, and the receipt of said trustee shall be a voucher to the lessees in any settlement they may make with commissioners from whom the lease has been taken. Under this act respondent has taken, and has the receipt of John F. Hannok, as county trustee for Polk county, for the sums of money before stated as paid on account of the lease in dispute. It is untrue that no account was stated by the company of the proceeds of said mine. The commissioners were informed of the true situation of the company; nothing was kept from them; and had complainants chose to ask, they would have had the like information. On the total account rendered when the dividend was declared of thirty thousand dollars, a full and special statement of the condition, affairs and accounts of said company was made; the township received its seven per cent. on the lease; there has been no profits since to declare any dividend out of, and of course nothing is due to complainants. In answer to the special interrogatories or requirements of said bill, respondent says the gross value of the ores taken from said mines to 30 June, 1856, was one hundred and fifty-eight thousand and nineteen dollars and fifteen cents; said ores were sold in Baltimore, New Haven and England, at

four and five dollars each, one per cent., and sold to various purchasers whom respondent cannot now recollect.

The cost of mining, labor, materials, supplies and transportation to market, and incidental expenses at market, were kept together, and amounted to the sum of one hundred and sixty-two thousand nine hundred and five dollars and fifty-six cents.

In answer to the requirement to produce the books, accounts and vouchers of said company, respondent states they are kept in the city of New York; but a transcript from them, sworn to by the treasurer, marked A A, is herewith filed and prayed to be taken as a part of this answer, which contains a full statement of the condition of said company, the capital stock paid in, receipts from ores, and present debt of the company, making in the aggregate $213,606 32; and said statement also shows all the expenditures of said company, and on what account, from which it fully appears that on the 30th June, 1856, said company had expended in developing the property, all the capital stock of the company, all the proceeds derived from the sales of ores, and were then in arrears in the sum of $20,587 17. There has been no regularly prepared statement of the working of the mine since the date referred to, but *is* respondent is satisfied a regular statement of the working of the mine since 30th June, 1856, would not materially affect the balance as there declared—that is, would not show any profits realized since then. The land in dispute cost the Tennessee Mining Company the sum of sixteen thousand five hundred and seventy-seven dollars and seventy-seven cents—that is, for the fee of the land, and for the lease and expenses one thousand; for the lease seven thousand five hundred, to Callaway and others; the purchasers at the sale, one thousand seven hundred and seventy dollars paid to the State, and six thousand to Caldwell and Symons, for their reserved interest. By reserved interest is meant stock they were to take in a company to be formed, and after this for the stock they *was* to have in said company. The six thousand dollars was given in lieu, and three hundred and seven dollars and ninety-nine cents accrued in perfecting said purchase of real estate; making the whole cost to the company, as stated, $16,577 79; and this respondent, in conclusive, insists, that having, or said corporation has, the grant of the State of Tennessee for the lands in dispute, duly and regularly issued, and *said* stated through her officers, having lawful and full power, issue the same, that complainant have no right in law, nor have they any such interest, or are they invested with any authority to institute proceedings to vacate or have said grant declared null and void, which question of authority to file said bill is submitted to the honorable court; and now having fully answered, respondent prays to be hence dismissed.

SAMUEL CONGDON.

ROWLES & HAYS,
Solicitors for Respondent.

STATE OF TENNESSEE,
Polk County.

This, the 3d day of November, 1856, personally appeared before me, Samuel Congdon, and made oath in due form of law that the facts stated in his foregoing answer, as of his own knowledge are true, and those stated from the information he believes to be so.

SAMUEL CONGDON.

Sworn to and subscribed before me, day and date above written.

BENJAMIN MANN,
J. P. for Polk County, Tenn.

The joint and several answer of Euclid Waterhouse and Thomas H. Callaway, to the original and amended bill of complaint filed against them and others, in the chancery court at Benton, Tennessee, by John Goodman and Yancey S. Bledsoe, common school commissioners, &c., &c. These respondents come, and saving and reserving to themselves all benefits of exception, &c., &c., for answer to said bill, say, it is untrue that in the year 1850 or 1849 valuable discoveries were made, valuable ores of copper, upon the 16th section *section* of fractional township four south, in range five east, of the basis line, in the Ocoee district. It is true, though, that before those years some copper ore, as early as in 1848, had been found in *at* what is known as the Hiwassee mine, in the 8th civil district, but no valuable discoveries, then known to be such, had been made. The section of land described in the bill was one set apart by law for the support and maintainance of schools in said township four south. The complainants, it is admitted, with one George M. Coleman, as respondents are informed and believe, were elected common school commissioners, about the first of the present year. These respondents deny, from information and belief, that John Caldwell and James V. Symons made the discoveries charged to have been made by them of copper ores, on the school section of school land described in complainants' bill, either in the year 1849 or 1850.

These respondents are informed and believe, that said Caldwell, so far as one private individual could do, did procure the passage of the law alluded to in the bill, but deny that before the passage of said law, he or Symons had ascertained the existence of copper ore on said section of land. Respondents believe it to be true, that said Caldwell and Symons and *he* procured the execution of the lease mentioned in the bill. Respondents also believe the instrument set out by complainants, and as a true copy of the lease to be such.

These respondents were of opinion *on* that said lease was illegal at the time given, for the reason that before its execution, the circuit court of Polk county, at its February term, 1850, had ordered

said land to be sold under proceedings duly instituted previous to said order of sale, and at such sale, which was made after the said John Caldwell and Symons had filed a bill in chancery to prevent such a sale of the land from being made as did not recognise said lease, these respondents and associates purchased said land at its sale; and on the said Caldwell and Symons amending their bill after said sale, and making *their* respondents and associates parties, respondents and associates filed their bill in the nature of a cross-bill against said *Cas*well and Symons to have said lease declared invalid. These proceedings were had in the chancery court at Athens. In their progress, the hon. chancellor so strongly intimated that his opinion was in favor of the validity of said lease, that respondents and associates deemed *to* their interest acquired under said purchase, for the reason that the land for agricultural purposes was not worth more than valued at, $420; and if the lease should be declared valid, then, as it covered the supposed mineral that might be found on it, respondent would have paid for it, or bid off by them about four times its agricultural value, they having bid the section off at seventeen hundred and seventy dollars. Having great confidence in the legal judgment of the chancellor who intimated said opinion, these respondents cannot assume to say that said lease was illegal, but submit, so far as they are concerned, to the hon. court, *being as they are concerned to the hon. court*, being, as they are advised, a question of law. These respondents are unadvised from personal knowledge of the character representations made by Caldwell or Symons, the execution of said lease, but *but* little reasons to believe that he procured said lease by representing the property to be of but small probable value, and have no doubt but he did represent to said commissioners, that if copper were found on said section, the lease would be of great value to said township. These respondents feel no hesitation in saying that, in their opinion, said Caldwell or Symons, nor any one else at the time of taking said lease, could have known the true value of the mineral interest in said property; it was then untested, and copper, as these respondents are informed and believe, was not cut on said property until some time in the year 1851, perhaps in the month of September of that year. These respondents deny that the said *Cas*well and Symons were experienced miners, and well knew the value of the minerals in said land. Respondents believe that the common school commissioners were not educated men, and had no experience in the business of mining or value of copper ores. Whether said commissioners were overreached in the provisions of said lease, and made one less favorable to the interests of the township *then* they ought to have done, is, as they are informed, a question on which men would differ. No copper property in that region of country had been tested, except the Hiwassee mines may have been considered as partially tested; but its value as a copper prop-

erty unknown; there was but little or no mining skill then in that section; the character of the tests to be made, when to be made, and the time required, and expenses to be incurred, were but imperfectly understood, but not sufficient to predicate a belief; but respondents are informed on that point, that seven per cent. net reserved to the lessors of untested properties, where the lessees run all the risk of losing their time and means in testing property not known to contain the mineral sought for, is a fair and reasonable reservation; but of this whole charge of the rates of leasing, they have no sufficient information. Respondents are informed and believe the people of said township were not consulted as to whether they would yield their assent to said lease, but these respondents deny that they have either heard or been informed that the people of the township dissatisfied with said lease had the petition mentioned in the bill prepared and signed, having for its object, as stated, the *setting* article of said lease, or that any one as charged got possession of said lease, held up and obtained a compromise of the lessees, Caldwell and Symons, of some differences between them.

These respondents further answering, state it is true that said Caldwell and Symons, as they are informed and believe, sold, some time in the year 1851, their interest to Samuel Congdon, as agent for Charles Congdon and associates, of New York.

These respondents are informed that the term associates was because it was contemplated to form a company to be composed of said Charles Congdon and others. These respondents are informed and believe, that said *said* Charles Congdon afterwards sold and conveyed his interest in said lease to the Tennessee Mining Company, a corporation existing by virtue of a charter from the State of Tennessee. These respondents are not and never have been members of said corporation, nor do they now or have they ever owned any of its stock; they do not know who the members of said company are; believe Charles and Samuel Congdon to have interest in said company.

This respondents know nothing of the circumstances of notice, or whether any, under which the Tennessee Mining Company purchase the lease complained of. Samuel Congdon is the superintendent of said mine, and attends to having the same worked; as to his books, papers, and accounts in relation thereto, or of said company, respondents know nothing, nor are they advised as to whether he has refused to settle with complainants; and if so, on what ground; nor are they advised that anything is due and owing to said township in the lease referred to; of all these things, and many others in said bill, respondents are ignorant and have no interest in.

It is true that said corporation have been raising ore from said mine, and sending the same to market, but whether the amount realized from its sales covered its expenses, and that anything is

now due complainants, respondents are unadvised of; but in this connection respondents will state, as they believe, the ores taken from said mines are known as the black oxide of copper, and copper property that only yields this description of ore is not considered by miners as having affixed to it any permanent value; the ore is exhausted sooner or later if found in remunerating quantities; and then the mine is worthless, if the yellow sulphuret of copper is not obtained; it is this character of ore that gives a fixed and permanent value to property *having*. Expenditures of money have been made in the Ducktown region of country by different companies with a view of testing whether or not the yellow suphuret of copper existed there; amongst other companies so engaged, respondents have been informed, are the Tennessee Mining Company. These respondents are unadvised of the sums of money expended by the Tennessee Mining Company, or whether it has expended money on the smelting establishment alluded to in the bill or not; they are informed and believe said company contributed with other miners in the Ducktown region towards opening the road down the Ocoee river, so as to have a way by which the mineral ores could be transported to market, but respondents are unadvised as to what proportion of said subscription, *of* any, was charged to complainants, but these respondents are informed and believe heavy expenditures have been made by said corporation in improving, opening, and testing the property in question; the amount of those expenditures, and what perfection, if any, and charged complainants, these respondents are unadvised of.

These respondents here say, that after their purchase of the property, under the order of sale of the circuit court, in June, 1850, and from that time on up to this time, have neither mined, secured, or sold any of the ores on said land, neither before nor since the formation of the Tennessee Mining Company; they have had no claim or interest in said property since their sale of it, or hereinafter stated; they have no charge or accounts against said complainants, or said school section, nor is anything due from those represented by complainants to those respondents; that they are now owner of . As to the lease complained of respondents were opposed to it and had no agency direct or indirect in its procuration, nor in the passage of the law complained of; in that respect respondents resorted to litigation, as before stated, to try and defeat said lease, and only abandoned it after they *seen* from the intimations of the chancellor how it would result; they expressly deny all and every charge of combination and fraud made against them in regard to said lease, as also all and every charge of even countenancing it in any shape. Said lease, as before stated, rendered the object they had in purchasing said lands *negotiary;* they intended to test the same for the purpose of trying to discover copper. To them it was valueless for agricultural purposes, and by the pro-

visions and objects of the lease any test they would have made even with the most fortunate results would only have enured to the benefit of the lessees. These respondents cannot but express thier surprise that they should, in view of the facts, have been supposed *or* friendly to said lease. The charge in the original bill, that these respondents made efforts in 1851 or 1852, and others intert ested with them, to have the land in question sold, reserving the mineral, is positively untrue; and it is also untrue that respondents made false and fraudulent representation themselves, or procured others so to do, employed to assist them; it also untrue that these respondents obtained an order of court, as charged, to sell the land in question, reserving the mineral and mining priority. These respondents are informed and believe that at the February term, 1850, of the county court of Polk, a return of election, previously had in the township in question, to ascertain whether or not the votes of said township were in favor of or opposed to a sale of the school land in dispute, was made to said court, and it appeared to the court from said return that it failed to decide whether the vote of the township was for or against the sale. The said county court, as its said Feb'y term, 1850, did appoint William S. Conner a commissioner, to ascertain the sense of the voters in said township as to the sale of said section, as said court had full power and authority to do so, as respondents are advised with. These respondents expressly deny that they procured said Conner to be appointed commissioner to take said vote. These respondents are informed and believe that said Conner, under the power thus conferred on him, did enter upon the discharge of the duty thus confided to him, and at the February term, 1850, of the circuit court of Polk county, said Conner returned into said court his proceeding in the premises, sworn to and subscribed by him before said court as prescribed by law, and said commissioner was then and there, as respondents are informed and believe, sworn in open court, and examined by the presiding judge, as to his, said commissioner's, discharge of the duty imposed on him, and touching the facts whether the signatures to said commissioner's return of the sense of the township, as put down for or against the sale of the school land, had been fairly taken, and their sentiments truly expressed and impartially allowed, which said commissioner deposed to be the case. And it appearing to the satisfaction of the court from said return that a majority of the qualified voters in said township now in favor of selling said school section, it was then and there declared by said court, that said *that said* section of land be sold by the clerk of said court, as directed by the acts of assembly in such cases, and said clerk was ordered to notify the county court, at its first quarterly session, to the end that they might appoint commissioners to value said lands, and that said clerk report to the next term his action in the premises. Said county court, at

its April session, 1850, did appoint commissioners to value said lands, as respondents are informed and believe, to wit, Henry Barker, Johnston Suit, and John Kesby, who, by their report of 3d May, 1850, valued the southeast quarter of said section at $60; the northeast quarter at $200; the southwest at $40, and the northwest at $120, making the value to be of the whole section $420.

These respondents have no reason to disbelieve, to call in question the truth of the report of said commissioners.

These respondents know nothing of the names of free persons of color, or unauthorized foreigners, being set down by the commissioner as voting for the sale of the land, or those of persons rendered infamous by judgment of law. Respondents do not admit the charge, and hold complainants to strict proof if they are to be affected thereby. These respt's *have* expressly deny that they procured or know of such vote being taken, if taken at all.

These respondents say it is absolutely and postively false that said commissioner was hired by them, or that he was paid by them, either directly or indirectly, to make a report favorable to the sale of said land; nor *does* these respondents believe the gentleman, or either of them, hereafter mentioned, as being joint purchasers with them, so *done* their character and standing will authorize this belief by respt's. These commissioners deny that they either knew anything about or had anything to do with the appointment of said commissioners, or with his report. Respt's do not believe that the names, or any of them, in said report, were set down as voting for the sale, without consultation or advisement with the persons themselves, the very nature of the transaction, and that the *notime* was to be plain *or record* with the names at full length, strongly. As the charge *as* one to be disbelieved, or, at least, not easily to be believed, they do not believe it.

These resp'ts know nothing of the original report of said William S. Conner, or whether the same is now to be found in the clerk's office of Polk county, but they are informed that said original report is among the files of the chancery suit, at Athens, before referred to.

It may be that many of the names, but of this they are not aware, in said report, are in the handwriting of the commissioner, but why they are forgeries for this reason is rather a novel idea to be advanced in a court of justice. If said report is on file at Athens, or is not now found in the clerk's office, in Polk county, they do not believe that it was withdrawn for any fraudulent purposes; the probability *as*, respondents believe, that if at Athens, it was obtained for some purpose connected with that suit, and omitted to be returned.

These respondents further answering, state that the resp'ts, Euclid Waterhouse, bid off said land at its sale for himself, resp'ts, Callaway, Thomas C. Lyon, and John B. Tipton, and Samuel

Johnston, long after the purchase of land by respondent, Thos. J. Campbell.

Said land was sold at public sale to the highest bidder on the 26th day of July, 1850. Before the day of sale Caldwell and Symons had filed their original bill, herein before spoken of; and at said sale the clerk in selling made a reserve of the interest that may have accrued to the *lures* under the lease complained of, and at the request of the common school commissioners a special reserve was made of the profits arising from said lease to them and their successors in office, for the use of the township. The remaining interest in said land was sold to the highest bidder and purchased, as before stated, for $17 76.

Samuel Congdon had nothing to do with said purchase, nor was he known to respondents at that time. Having purchased said land, a certificate purchase was given by the clerk to the purchasers. They paid down one-eighth of the purchase money—execution bond for the remainder, as required by law. At the October term, 1850, being the next term of the circuit court for Polk county, after said sale the clerk made his report; it was spread upon the record, but it appearing to the court that an injunction had been served upon the clerk, and the court being unadvised as to the extent of said injunction, all further action of the court was suspended in relation to said sale until the further order of the court. And in this connection respondents will state that at the October term, 1852, of said circuit court, it appearing to the court that Caldwell and Symons had dismissed their bill, and the cause was ended, and injunction dissolved, the report of the sale so made by clerk, being unexcepted to, was in all things confirmed.

These resp'ts further answering, state that in the year 1851, they believe September or October, they sold to Samuel Congdon, as agent for Charles Congdon, of New York, all the interest they took under the purchase aforesaid, assigned, as they recollect, to said Congdon their certificate of purchase, and their right to said land, and no further, being in effect a quit-claim, substituting their *thats* said Congdon was to and did pay the sum of seven thousand five hunded dollars for the interest acquired by them under said purchase. They have no recollection of making any conveyance to said Congdon of the lands, but assigned to him the certificate of purchase, or the benefit of said purchase; said Congdon, as such assignee, gave his bond for the remaining sum due for the land, which sums so to be paid by him were deducted out of the seven thousand five hundred dollars. The reasons for this sale *has* been before stated. These respondents are informed and believe that said money unpaid for said land has long since been paid by Charles Congdon, and that a grant from the State of Tennessee has issued to him. Of the No. and date of said grant they are not advised. These respondents do not know what the original grant ,

nor do they know who has . These respondents do not know what the knowledge of Samuel Congdon may have been at the time he made the purchase of the land of respondents and associates; had full knowledge, as charged, of *found* in obtaining the vote of the sale of the land; of *found* in the report of the commissioner, Conner; and then knew, as is stated, that the title to said land would be litigated and contested. Why, he certainly knew and was informed of more than respondents then knew or beleived, or now knows or believes. These respondents do not believe that Charles Congdon, at the time of the purchase by said Congdon, had ever been in this region of country; and Samuel Congdon was quite a stranger, having been in the country but a short time.

These respondents further answering, state that in the sale of the land to Charles Congdon the negotiations and purchase of the same were made through Samuel Congdon, as the agent of Charles Congdon; and these respondents made no representations to said Charles Congdon, or his said agent, as to leave the sale of the manner in which they had acquired the interest which they proposed to sell, nor did they make any representations to said Samuel Congdon as to the probability of *their* being any litigation about the title to the lands sold by them to him as agent aforesaid. These respondents had no reason to believe, nor did they then believe, there would be any other litigation than was then on hand, being the sales before herein spoken of. These respondents have neither paid money, property, or given credits to any person for the purpose of procuring and influencing the vote of the people for the sale of the school land. They neither paid nor agreed to pay William S. Conner for his services in making the report or return for the sale of the school land, or for procuring the vote for said sale. Respondents deny that they either hired or otherwise influenced other persons not to bid against them at the sale of said school land, nor paid any money or agreed to pay any for such purpose; but these respondents will state that they desired said school lands should be brought to sale in a legal and fair mode, and intended to purchase the same, if not sold for more than they believed to be a fair sum, and respondent Callaway agreed to pay one William Mills for any time he might lose in speaking to the people to try and have an election held for the sale of the school land, but not for using any influence in any election held for the purpose of procuring votes for or against the sale, but simply for the purpose to use fair and honorable means to bring about an election. The record shows an election was held, and it failed to decide for or against a sale. The county court then appointed Conner as commissioner, as before stated this answer. With said appointment, all proceedings under it, as before shown in this answer, respondents had nothing to do, nor paid money on account of, or done any of the acts charged, as to all which they have before fully

answered. Said Mills *satated* he had, in pursuance of said Callaway's offer to him, spent some time in trying to bring about an election, which election, as before shown, resulted in nothing. For his services in said matter, he was paid by respondent, Waterhouse, *the* believe, seven or eighteen dollars, or about that sum, and this is all the money or property or credits paid by respondents in that respect, or any other, effecting the sale of said school land. These respondents, as before herein stated, feel they have no interest in the matters of this suit. They sold what interest they took, and now *other* said purchase. The contract of purchase with them only in its terms and interest was a quit-claim, with no warranty or guaranty of any kind as to title; the sum they received was too small for a warranty to be given by them.

And these respondents having fully answered, pray to be hence dismissed with their costs, &c.

THOMAS H. CALLAWAY,
EUCLID WATERHOUSE.

ROWLES & HAY,
Sol'ct for Resp't.

STATE OF TENNESSEE,
Bradley County.

This 4th day of November, 1856, personally appeared before me, William Keller, an acting justice of the peace in and for the county and State aforesaid, Thomas H. Callaway and Euclid Waterhouse, and made oath in due form of law, that the facts stated in their foregoing answer, as of their own knowledge, are true, and those stated from information they believe to be so.

THOMAS H. CALLAWAY,
EUCLID WATERHOUSE.

Sworn to and subscribed before the date above written.
WILLIAM KELLER,
Justice of the Peace.

Exhibit A A, to Samuel Congdon's Answer.

Statement of Receipts and Expenditures of the Tennessee Mining Comp., from June 1, 1852, to June 30, 1856.

Receipts.

Rec'd from stockholders for sundry instalments, amounting to doll's 3½ per share on 10,000 shares	$35,000 00
Rec'd from sales of copper ores to June 30, 1856....	158,019 15
Balance, being the amount due the treasurer.....	20,587 17
	$213,606 32

Expenditures.

To pd. superintendent's draft for mining expenses...	$129,229 79

Labor, materials, and supplies, carriage of ore to Cleveland, &c.:

To pd. for machinery and implements.....	984 18
To pd. for buildings.....	7,300 00
To pd. for mules, wagons.....	6,364 42
To pd. amount of lease of school lands and title to same.....	16,577 79
To pd. subscription to Ocoee road.....	4,000 00
To pd. carriage and R. road freight to Savannah and Baltimore.....	28,409 64
To pd. of discount of draft and sales of ores....	4,467 80
To pd. charge on delivery of ore, weighing, &c.	417 42
To pd. dividend, 1½ doll's per share, on 10,000 full shares.....	15,000 00
To pd. cash in hand.....	473 87
	$213,606 32

N. B. A scrip *divided* of 1½ doll's per shares, on 10,000 shares, on which 3½ doll's had been paid, was declared and paid at the date of above dividend, to make said shares equal to full shares.

CHARLES CONGDON,
Treasurer.

Sworn and subscribed to before me, the 19th July, 1856.

JAS. W. HALE,
Commissioner for Tennessee, in New York.

The separate answer of the Tennessee Mining Company to the original and amended bill of complaint filed against her in chancery court at Benton, and against others, by Yancey S. Bledsoe and John Goodman, common school commissioners, &c.

This respondent now comes, and saving and reserving all benefit of exception to said bills, for answer thereto, answering says, that she has seen the answer of Samuel Congdon, one of the defendants, to the proceeding in this cause. This resp't could give no other or further answer than he has given, and she adopts the same, so far as applicable to her.

This respondent insists that she is a purchaser for the valuable sum of fifty thousand dollars; that she has paid said sum and taken a deed to her own *her* successors, without any notice of the alleged equities of complainants' bill; she therefore relies upon the fact of being a purchaser for a valuable consideration, without notice, sets the same up by way of bar to the relief prayed, and claims the same benefit of it by way of answer, as if formally brought forward by *film*. A copy of the conveyances to her are appended to the answer of Samuel Congdon, on exhibits to which respond-

ent refers, and she will produce the original when required by the hon. court. Respondent refers to and adopts the answer of said Congdon as to the time when and the circumstances under which she purchased the lands in dispute.

This respondent further insists before the hon. court, as stated in the answer of said Congdon, that it has been more than three years from the confirmation of the sale of the land in dispute, by the circuit court of Polk county, to the filing of complainants' bill, and, as she is advised, said confirmation was a final decree, and in legal effect divested all title out of those respondents, by complainants and all others, either corporate or natural persons, and vested the same in the purchases, under the sale confirmed.

These respondents, as shown by the answer adopted, *denies* title through said purchase *pury* in estate; is advised that said decree of confirmation being unreversed, unappealed upon, and standing in full force, as she avers the facts to be, the complainants *the complainants* are *bound*, by three years having so elapsed, from exhibitions their bill to impeach said sale or the decree confirming the same, and respondent here sets up said lapse of three years in bar to all the relief asked against this respondents, except as to complainants' show of profits, under the lease *sent* out in the bill, and respondent respectfully asks to have the same benefit of said defence, if fully set up and relied on, by formal plea.

This respondent denies that she has failed or refused to account to the common school commissioners, or those entitled to receive it, the rents or profits accrued to the township represented by complainants, accrued under the lease mentioned in the bill. Respondents adopts specially and refers to the answer of Samuel Congdon on this point.

This respondent insists she has paid to those entitled to receive the same, all that has accrued on said lease, and she denies that she has not at all times, when called on, given true and full information as to the state of her profits, in her corporate pursuit of mining on said lands, of the expenses of the same, of the amounts incurred for ores raised and sold, &c.

This respondent further insists that the large amounts expended in implements, materials, &c., subscription to Ocoee road, money laid out, and expenditures incurred for seeking and sinking shafts on said property for yellow sulphuret of copper, and all just and proper expenditures and legitimate objects of , be reimbursed or made good before any further dividend or profit can be declared on said mining operations. For all of said expenditures alluded to, or circumstances under which made, and sum total of the same, respondent refers to the answer of said Samuel Congdon.

As to the charges of fraud in procuring the law of Feb. 4th, 1850, in procuring the lease, in pressing a sale of the school land,

in imposing on the people of the township as to the value of said land, procuring or being privy to the names changed to have been used to procure the voters to vote for the sale of the same, of the several acts and charges of power against Caldwell, Symons, Callaway, Waterhouse, or the other charge in the bill, this respondent knows nothing, if *committee*, and this she derives from information. This respondent had no hand in nor was privy to the same, directly or indirectly, and insists before the hon. court that even if proved against the parties charged, could not affect respondent's title to the property in dispute, she being, as before stated, a purchaser for a full, fair, and valuable consideration, the money paid over, the conveyance taken, without notice of said fraudulent acts or doings.

Resp't again states that she could give no fuller answer than has been given by Sam'l Congdon, as to the matters of said bill, and therefore adopts the same, and prays to have the full benefit of all the defence set up therein, as also the defence in this answer.

Respondent in conclusion insists, that complainants never having asked for an examination of the accounts of the mining operations, and never having been refused all and every information asked in relation to the business of the corporation, and this respondent having been at all times ready to have gone into any more full examination of complainants' interest that they may have desired, that therefore complainants have brought resp't prematurely into this hon. court, and should be subject to all costs consequent on taking an accont, and all costs there may accrue to resp't.

Resp't will, in conclusion, state, that if they should be mistaken as to the matters of defence insisted on *an* set up, still, as they are advised, complainant could only have relief as to them on repayment of the consideration given for the land, and full *imbursement* for all expenditures, which will be insisted on should the hon. court declare the sale and lease complained of void, which resp't is advised improbable.

And now, having fully answered, resp'ts pray, &c.

TENNESSEE MINING COMPANY,
SAMUEL CONGDON, *Sup't.*

ROWLES & HOYL,
Sol's for Resp'ts,

STATE OF TENNESSEE,
Polk County.

This 4th day of November, 1856, personally appeared before me, Benjamin Moun, an acting justice of the peace in the county and State aforesaid, Samuel Congdon, and made oath, in due form of law, that he is superintendent of the Tennessee Mining Company,

the resp't in the foregoing answer, and has been such ever since the organization of said corporation; that by means of such, his office of superintendent, he has acquired and possesses, as he verily believes, greater and more particular knowledge of and relating to the matters of complainants' bill against the respondents, and relating to the matters of the foregoing answer, and of the facts therein stated, than the president or either of the members of said corporation — a knowledge of many of some matters appertaining peculiarly to the *provincen* of deponent as such superintendent; deponent has read the aforesaid answer subscribed by him and said Tennessee Mining Company, and said answer is true of his own knowledge, except as to the matters and things which are therein stated to be on information and belief, and to be true as stated.

SAM'L CONGDON.

Sworn and subscribed before me the day and year above written.

BENJAMIN MOUN,
J. P. for Polk County, Tennessee.

The separate answer of Samuel M. Johnston to the bill of complaint filed in the chancery court at Benton, Tennessee, by John Goodman and Yancey S. Bledsoe, a common school commissioner, and against him and others.

This respondent now comes, and saving and reserving all benefit of exceptions, and for answer, the said bill of complaint answering, says he has *saw* and inspected the joint and several answers of Thomas H. Callaway, Euclid Waterhouse, and also the answer of Thomas C. Lyon and John B. Tipton. This respondent could make no fuller answer than they have made; he believes said answers to be true, and adopts the same, and insists on the matters therein set forth as matters of defence and answer to said bill of complaint, and prays to have the same benefit of said answers as if the matters of the same had been herein averred and stated at length by him. Now, having fully answered, he prays to be hence dismissed, with his costs, &c.

SAM'L M. JOHNSTON.

ROWLES, *Sol'r for Sam'l L. Johnston.*

STATE OF TENNESSEE,
Polk County.

This 2d day of February, 1857, personally appeared before me, at my office in Benton, Tennessee, Samuel M. Johnston, and made oath, in due form of law, that the matters and things of his foregoing answer are true as therein stated.

SAMUEL M. JOHNSTON.

Sworn to and subscribed before at office, this 2d February, 1857.

JAMES H. ALEXANDER, *C. and M.*
By JAMES SMITH, *D. C. and M.*

The separate answer of John Caldwell to the original and amended bill of commissioners, filed by John Goodman and Yancey S. Bledsoe, school commissioners, vs. this resp't, Sam'l Congdon, Tennessee Mining Co. and others, in the chancery court at Benton.

This respondent, reserving the benefit of all just and legal exceptions to the form and substance of said bill, for answer thereto says: That about the year 1849 he made some search for minerals in Ducktown, Polk co., and among other observations there made, he discovered sufficient indications on the property known as the school section, now claimed by the Tennessee Mining Company, to induce further labor and development. He had *associates* with at that time James V. Symons, who professed to be a Cornwall miner. This Ducktown district is surrounded by mountains, is remote from the more thickly settled portions of the county, and at that time was almost inaccessible. It had very little intercourse with the balance of the world, and scarcely any educational advantages. This school section was valued at $420, and the estimate was probably higher than the market would have justified, aside from the chances of mineral worth. There being no one competent to give a satisfactory lease upon the section, this resp't went to Nashville and had a bill, or a section of a bill, drafted and presented to the legislature, then in session, which became a law on the 4th of February, 1850, (see Acts, p. 393.) On his return from Nashville, he found that preliminary steps had been taken, and at the February term, 1850, of the Polk circuit court an order had been passed for the sale of this section. This had required a vote or census of the district to be taken, and as they had voted to sell, and the order had been obtained to that effect, respondent, without further inquiry, considered that his project had failed, and he returned home. He learned afterwards that an election had been held for commissioners in that district, *on* that the com'rs elect would probably favor a leasing of the section for mining purposes. Resp't returned to Ducktown, and on the 21st of May, 1850, he procured the instrument of lease, which is in substance set forth in the original bill. The next difficulty was the want of means to prosecute the lease. Resp't sought for aid, and offered interest to different persons on condition that they would advance money for expenses. William H. Hancock accepted the offer, and agreed to aid in making tests, and resp't and Symons were to secure to him one-sixth in the lease. Very soon a controversy arose between the lessees and the purchasers under the sale ordered by the circuit court. Proceedings were instituted in the chancery court; injunctions were had on each side; Hancock became indifferent, and

would not aid in making the necessary tests. Rather than be *meanbune* respondent proposed to pay Hancock $200 for his interest; this he accepted, and surrendered the instrument of writing which evidenced his rights in the lease. This obligation to Hancock has been discharged to his satisfaction so far as this resp't is concerned. This is the only contract or agreement made with Hancock, and resp't has paid no other money for any other purpose to Hancock that was in any way connected with this lease. Resp't does not hesitate to say that Hancock took part in bringing about a state of feeling in the district favorable to a lease. Many others did the same. The question was canvassed in the election for com'rs, as resp't is informed and believes. What precise part Hancock took in this election this resp't does not know, but resp't does absolutely deny that he employed Hancock to use his influence with the people or the com'r to obtain the lease.

During the pending of the litigation above alluded to, resp't heard of a statement that had been reduced to writing and signed by some citizens of Ducktown, which expressed an opinion or preference against the lessees. How it was to be used, respondent does not know, nor does he know whence it originated. The lease had been made, and probably confirmed, but of this he is not certain; and the suit was pending as intimated, one side contending for the lease and the other for the sale. Resp't did not fail to remonstrate against steps being taken which procured the destruction of his interests and those of the children of the township; the sale would give them six per cent. interest upon $1,770, and the lease seven per cent. upon a sum that resp't believed would be immensely larger. If an account shall be taken in this cause, the exact difference may be known. Resp't did not get possession of this "petition," as it is called; did not destroy it; does not know what became of it. He did nothing more than attempt to convince those with whom he conversed, that their interests would be but *subvurned* by the maintenance of the lease.

Resp't having now given a brief history of the case, denies that he used any fraud or attempted to mislead any one upon that subject. Resp't had been engaged in mining to some extent before that, and Symons professed to be a miner of more experience. They both believed that the indications on the surface were favorable for copper ore; they were willing to work and spend money in making the test. They called a public meeting of the citizens in Ducktown, and this resp't made a speech to them giving his views of the whole case, explaining the subject as well as he could; tried to convince them that there was wealth in their mountains, and particularly on the school property. He told them that the property ought to be leased and tested, and developed; that *that* a fund might be created without any expense to the township; and, in short, he did everything in his power to convince them that their

property was valuable, but resp't did not know that copper was actually there. No test had been made; no certainty had been arrived at, nor was copper actually discovered until the latter part of the summer or first of the fall of 1851. Resp't does not know now, nor did he know then, that any shaft had been sunk or other exertion made upon this section prior to the work done by himself. He does not believe any work had been done on the property, of a mining character. Resp't has never had any desire to defraud the township. After the litigation had been pending for some time, an attempt was made to compromise at the sacrifice of the lease, which respondent rejected absolutely, and that upon the sole ground that the lease was not to be protected in the proposed arrangement. After, when resp't found himself involved in difficulties, poor as he was, he did not hesitate to sell at a sacrifice in view of securing the benefit of the lease to the township.

The sale was made to the parties charged in the bill, viz: C. Congdon and his associates; who they were resp't did not know, nor has he since ascertained. The purchasers took an assignment of resp't and Symons' interest, and they stand in their shoes.

This resp't had nothing to do with getting up a sale of the soil or surface; paid no money to W. S. Conner, nor to any one, to aid in bringing about a sale. Resp't did not want the land sold, for he believed it would *unlitale* against the lease, and he only bid at the sale with a view of consolidating the property and preventing a conflict of interest.

Resp't gave no information to S. Congdon, or C. Congdon and his associates, that frauds had been perpetrated in obtaining the lease. No such frauds had been practised and no such information given.

Resp't does not deem it necessary to give an answer to the other charges in said bill, as they pertain to others and to subjects with which he has no connection. He is not interested in the matter in any way, and has not been since the sale of his interest in the lease.

Resp't hopes and believes that the legislature had the power to pass the law now drawn into controversy; that the lease can and will be maintained, because it was honestly and fairly obtained, and was the means of bringing to the notice of the world untold wealth, a sufficiency of which may thus be appropriated to keeping up the arts and *services* in a once benighted region.

Having now answered as fully as he is advised is material, he prays to be hence discharged with his costs.

JOHN CALDWELL.

JARNAGIN & CALDWELL,
Sol's for Resp't.

STATE OF TENNESSEE,
McMinn County.

This day John Caldwell made oath, in due form of law, that the statements in the foregoing answer, made upon his own knowledge, are true, and those upon the information of others he believes to be true.

JOHN CALDWELL.

Sworn to and subscribed before me, this 10th Nov., 1856.

WM. LOWRY, *C. & M.*
By WILLIE LOWRY, *D. C. & M.*

The joint answer of Jno. B. Tipton and Thos. C. Lyon to the bill filed in the chancery court of Polk county, by John Goodman and Yancey J. Bledsoe, common school comm'rs, against them, and others.

These resp'ts, reserving all questions as to form and substance of the bill, answer and say, that they have but little personal knowledge of the matter charged in said bill. They are associated with Thos. H. Callaway, Euclid Waterhouse and Sam'l M. Johnston, in the school section in question. They were desirous to purchase it, and did jointly purchase it.

But these respondents used no means whatever to procure a sale, paid no money, made no promises, employed no agent for that purpose. Resp'ts were almost entirely unacquainted in that region, and were not in the country during that time, that they can remember. They had no connection whatever with Symons, or either of them, in procuring the lease referred to. That lease and Caldwell's interest was hostile to their claim and title.

These respondents concurred in the sale made to Congdon by their associates, but they did not see him or have any conference with him, either oral or in writing, and therefore made no representations to him concerning the land, or the title, or the litigation that might ensue. Resp'ts agreed to this sale, because the value of the mineral interests therein was unknown to them, and also because the bill in conflict with the lease was in some difficulty or embarrassment, and they desired to be free from all trouble or litigation. These resp'ts have inspected the answer of their associates, Callaway and Waterhouse, and believing it to contain the truth, on that belief they adopt it as their own.

And having now fully answered, they pray to be hence discharged with their costs.

ROWLES & HOYL,
Sol's for Resp'ts.

STATE OF TENNESSEE,
Knox County.

This day personally appeared before me John B. Tipton and

Thos. C. Lyon, and made oath in due form of law, that the facts stated in the foregoing are true to the best of their knowledge, information, and belief.

THOS. C. LYON,
JOHN B. TIPTON.

Sworn to and subscribed before me, Nov. 11th, 1856.

TANDY MONDAY,
Justice Peace, Knox County.

Copy No. 1.

This indenture, made and entered into this 21st day of May, one thousand eight hundred and fifty, by and between Benjamin C. Dugger, James Lew*man*, and Samuel Denton, school commissioners for dis. No. 8, in the civil division of Polk county, Tennessee, of the first part, and James V. Symons and John Caldwell of the second part, witnesseth: that for and in consideration of the covenants and agreements hereinafter expressed, the said commissioners hath, on the day and date above written, and by these presents doth convey and confirm to the said James V. Symons and John Caldwell, their heirs, executors, or assigns, of entering in and upon the sixteenth section, fractional township four south, range five east, of the basis line, Ocoee district, said section being bounded W. and S. by the lands of Benjamin C. Dugger, and east and north by Waterhouse and others, and the said Symons and Caldwell, as above stated, and by these presents secured in the privilege of searching for mineral and fossil substances to any extent they may deem advisable, but not to hold possession of any part of said land for any other purpose, except so far as water power and wood for mining purposes may be necessary, and the contracting parties covenant and agree that no damages shall be done in or upon said lands other than may be necessary in conducting said operations; and the contracting parties further agree, that should no mineral or fossil substance be mined or quarried, as none contemplated, in the space of six months from the day and date above written, or should the mining operations cease at any one time for the space of six months, in either case it shall amount to a forfeiture of the lease at the discretion of the said commissioners, or their successors in office, and the said Symons and Caldwell, for themselves, their heirs and executors, administrators and assigns, covenant and agree to pay to the said commissioners, and their successors, seven per cent. of the net proceeds of all mineral and fossil substances mined or quarried in or upon said section; and finally, the contracting parties agree, that *that* this lease shall be and is hereby confirmed for the period of ninety and nine years from the day and date above written, on the express condition that the dues shall be promptly paid over to the said commissioners, and their

successors, on the sale of the proceeds of the mine, and the said contracting parties have in confirmation set their hands and affixed their seals.

B. C. DUGGER, [SEAL.]
SAMUEL DENTON, [SEAL.]
JAMES H. LEWING, [SEAL.]
JOHN CALDWELL, [SEAL.]
JAMES V. SYMONS. [SEAL.]

In presence of—
JOHNSTON SUIT,
RALPH SUIT.

The words, and John Caldwell, six, and months, interlined before signed, and acknowledged by said parties.

JAMES V. SYMONS,
JOHN CALDWELL,
B. C. DUGGER, [SEAL.]
SAMUEL DENTON. [SEAL.]

STATE OF TENNESSEE,
Polk County.

Personally appeared before me, E. P. Douglass, clerk of the county court for the county of Polk, Benjamin C. Dugger, Samuel Denton, and James Lewing, common school commissioners, lessors, and John Caldwell and James V. Symons, lessees, the within named parties, acknowledged the due execution of their signatures to the within lease or articles of contract for the purposes therein contained.

Witness my hand at office, in Benton, July 6th, 1850.

E. P. DOUGLASS, *Clerk.*

STATE OF TENNESSEE,
Polk County.

July 6th, 1850, 10 o'clock a. m.

Then was the foregoing lease and clerk's certificate noted in notebook A, registered in my office, in Benton, in book C, page 200, 201.

ROB'T N. FLEMING,
Register.

Register's fee, $0 75 p'd.

STATE OF TENNESSEE,
Polk County.

I, Robert N. Fleming, register for the county and State aforesaid, hereby certify that the foregoing is a true and correct copy of the lease named therein, and of the clerk's and register's certificate thereto, as remaining of record in my office.

[REC. CCLXV, D. T. 1859.]—7

Given under my hand at office, in Benton, this 22d day of February, 1856.

ROB'T N. FLEMING,
Register.

Register's fee, $0 87½.

Filed with Samuel Congdon's answer.

Copy No. 2.

We, James V. Symons and John Caldwell, for and in consideration of the sum of one thousand dollars to us in hand paid, the receipt whereof is hereby acknowledged, have this day bargained and sold, and do hereby transfer, convey and assign to Samuel Congdon, agent for Charles Congdon and his associates, of New York, their respresentatives and assigns, all the right, title and interest that we, or either of us, have in and to the sixteenth section, fractional township four south, range five east, of the basis line, in the Ocoee district, Polk county, Tennessee, under and by virtue of a lease for ninety and nine years executed to us by the school commissioners of civil district No. 8, in Polk county aforesaid, bearing date the 21st day of May, A. D. 1850, hereby *confirming* upon and assigning to the said Congdon, as agent as aforesaid, all the rights, privileges and benefits secured to us by said article of lease, subjecting him, as such agent, to all the burthens and liabilities incurred by us through and under the same, and we bind ourselves to deliver immediate possession of said leased premises whenever called for.

Witness our hands and seals this ninth day of June, A. D. 1851.

JOHN CALDWELL, [SEAL.]
JAMES V. SYMONS. [SEAL.]

Witness—
A. McKELDIN,
J. W. LILLARD.

STATE OF TENNESSEE,
McMinn County.

Personally appeared before me, G. W. Mayo, clerk of the county court of said county, John Caldwell and James V. Symons, the bargainors to the foregoing deed of conveyance, with whom I am personally acquainted, and who acknowledged the due execution of the same on the day and year it bears date, and for the purposes therein expressed, certified for registration in Polk county, Tenn.

Given under my hand at office in Athens, the 10th day of June, 1851.

GEORGE W. MAYO, *Clerk.*

STATE OF TENNESSEE,
Polk County.

October 6th, 1851, 10 o'clock a. m.

Then was the foregoing assignment of lease, together with the clerk's certificate, noted in note-book A, page 88, registered in my office in Benton, in book C, page 390.

Register's fee, $0 75.

ROBT. N. FLEMING, *Register.*

STATE OF TENNESSEE,
Polk County.

I, Robt. N. Fleming, register in and for the county and State aforesaid, hereby certify that the foregoing is a true and correct copy of the assignment of lease named therein, and of the clerk's and register's certificates thereto, as remaining of record in my office.

Given under my hand at office, in Benton, this 22d day of February, 1856.

Register's fee, $0 87½.

ROBT. N. FLEMING,
Register.

Copy No. 3.

State of Tennessee—Grant 7,339.

To all whom these presents shall come, greeting:

Know ye that, in consideration of a certificate issued by Thomas J. Campbell, cashier of the Branch Bank of Tennessee at Athens, Tennessee, dated on the 13th day of January, 1853, certifyng that on the 26th day of July, 1850, Samuel M. Johnston, John B. Tipton, Thomas C. Lyon, Euclid Warehouse and Thomas H. Callaway, became the purchasers of the sixteenth section of fractional township four south, range five east, of the basis line, Ocoee district, for the sum of seventeen hundred and seventy dollars, under the provision of the laws of Tennessee authorizing the sale of the school land in the Ocoee district, certain mining privileges being reserved in the statement of the clerk who sold said lands, &c.; and it further appearing from the statement of the cashier aforesaid, that the said Samuel M. Johnston, John B. Tipton, Thomas C. Lyon, Euclid Waterhouse and Thomas H. Callaway, having conveyed all their interest in said purchase to Charles Congdon, and the said Charles Congdon having paid all the purchase-money, and the interest accrued thereon, in the said Branch Bank of Athens, Tennessee, as appears from said certificate of the cashier, there is granted to him, the said Charles Congdon, by the State of Tennessee, all the interest which the said Samuel M. Johnston, John B. Tipton, Thomas C. Lyon, Euclid Waterhouse and Thomas H.

Callaway acquired by said purchase in the above described land, lying and being in the county of Polk, and State of Tennessee, with its appurtenances, to have and to hold to the said Charles Congdon and his heirs forever.

In testimony whereof, William B. Campbell, governor of the State of Tennessee, hath hereto set his hand and caused the great seal of the State to be affixed at Nashville, on the 28th day of February, 1853, and of American independence the 77th.

By the governor.

(Signed) W. B. CAMPBELL.
(Signed) W. B. RAMSEY,
Secretary of State.

Charles Congdon hath title to the above described land.
(Signed) JAMES S. BRADFORD,
Register of the Ocoee District.

Recorded in my office, book N, 1853.
JAMES S. BRADFORD,
Register of the Ocoee District.

Recorded 18 May, 1853.

I, James S. Bradford, register of the Ocoee district, do certify that the foregoing is a true copy from the records of my office.
JAMES S. BRADFORD,
Register, &c. of the Ocoee District.

Copy No. 4.

This indenture, made this twenty-second day of November, in the year one thousand eight hundred and fifty-two, between Charles Congdon, of the city of Brooklyn, county of Kings, and State of New York, merchant, party of the first part, and the Tennessee Mining Company, a corporation duly constituted and established in the State of Tennessee, under an act of the legislature of that State, entitled An act to incorporate the Tennessee Mining Company, passed February 25th, 1852, party of the second part, witnesseth: that whereas, heretofore, and before the passage of the aforesaid act, to wit, on the 9th day of June, A. D. 1851, James V. Symons and John Caldwell assigned to Samuel Congdon, agent for Charles Congdon and his associates, of New York, a certain indenture of lease of certain lands known as the sixteenth section, fractional township four south, and range 5 east, of the basis line, Ocoee district, Polk county, Tennessee, for ninety-nine years; and whereas the said Charles Congdon and his associates have all become, and are now stockholders and corporators in the said Tennessee Mining Company, and are desirous that said indenture of lease, and the right, title and interest of the said Charles Congdon and his said associates therein, or of, in, or to the lands therein described, with

all the privileges, rights, mines, property, appurtenances thereto belonging, or in anywise appertaining, shall be assigned and conveyed to and vested in the said Tennessee Mining Company: *No* this indenture witnesseth, that the said Charles Congdon, party of the first part, for himself, and for and on behalf of all his said associates, and for and in consideration of the sum of one thousand dollars, to him in hand paid by the Tennessee Mining Company, the party of the second part, the receipt whereof before the ensealing and delivery hereof is hereby acknowledged, hath bargained and sold, transferred, assigned, conveyed and set over, and by these presents doth bargain, sell, transfer, assign, convey and set over to the Tennessee Mining Company, the party of the second part, their successors and assigns, the said indenture of lease, which indenture is hereto annexed and declared to be a part of this instrument, and all and singular the right, title, interest, property, claim and demand of the party of the first part, and his associates, of, in, and to said indenture, and of, in, and to the lands, mines, quarries and minerals thereto belonging, or in anywise appertaining; to have and to hold the said indenture, and the lands, premises and real estate, with the tenements, hereditaments, privileges and appurtenances thereto belonging or in anywise appertaining, unto the said the Tennessee Mining Company, the party of the second part, their successors and assigns, for and during the period and until the full end and term of ninety-nine years, from the 21st day of May, in the year one thousand eight hundred and fifty, the date of said indenture, subject to the conditions and reservations in said indenture expressed and reserved; and the said party of the first part, for the consideration aforesaid, hereby covenants and agrees with the party of the second part to deliver to and put said party of the second in immediate possession of all the lands and premises described in said annexed indenture of lease; and the said party of the first part, for the considerations aforesaid, further covenants and agrees with the party of the second part hereto, that he will, within one hundred days from the date hereof, cause to be conveyed by good and sufficient deed or deeds, to the said the Tennessee Mining Company, the party of the second part, in fee simple, the lands, premises and real estate described in said indenture of lease hereto annexed, together *together* with the appurtenances thereto belonging.

In witness whereof the party of the first part hath hereunto subscribed his name and affixed his seal, the day and year first above written.

CHARLES CONGDON. [SEAL.]

Sealed and delivered in the presence of (the word cause having been interlined before the execution hereof)—

GEO. MARSHALL,
LIBBEUS CHAPMAN, JR.

STATE OF NEW YORK,
City and County of New York, ss.

Be it remembered, that on the 22d day of November, 1852, before me, the subscriber, a commissioner in and for the said State, appointed by the governor of the State of Tennessee to take acknowledgments, &c., personally appeared Charles Congdon, to me personally known to be the individual described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same as his free act and deed.

In witness whereof I have hereunto set my hand and affixed [L. S.] my official seal, at the city of New York, the day and year above written.

LIBBEUS CHAPMAN, JR.,
Commissioner for Tennessee.

STATE OF TENNESSEE,
Polk County.

October 11th, 1853, 5 o'clock p. m.

Then was the foregoing transfer of indenture of lease ordered, together with the commissioner's certificate, noted in note-book A, page 114, registered in my office in Benton, in book E, pages 43, 45.

ROB'T N. FLEMING, *Register.*

Register's fee, $0 75.

Lease.

This indenture, made and entered into this 21st day of May, one thousand eight hundred and fifty, by and between Benjamin C. Dugger, James H. Lewing, and Samuel Denton, school commissioners for dis. No. 8, in the civil division of Polk county, Tennessee, of the first part, and James V. Symons and John Caldwell, of the second part, witnesseth: that for and in consideration of the covenants and agreements hereinafter expressed, the said commissioners hath, on the day and date above written, and by these presents doth convey and confirm to the said James V. Symons and John Caldwell, their heirs, executors, or assignees, of entering in and upon the sixteenth section, fractional township four south, and range five east, of the basis line, Ocoee district, said section being bounded W. and S. by the lands of Benjamin C. Dugger, and east and north by Waterhouse and others, and the Symons and Caldwell, as above stated, are, by these presents, secured in the privilege of searching for mineral and fossil substances, to any extent they may deem advisable, but not to hold possession of any part of said land for any other purpose, except so far as water-power and wood for mining purposes may be necessary; and the contracting parties covenant and agree that no damage shall be done in or upon said lands, other than may be necessary in conducting said operations; and the contracting par-

ties further agree, that should no mineral or fossil substances be mined or quarried, as now contemplated, in the space of six months from the day and date above written, or should the mining operations cease at any one time for the space of six months, in either case it shall amount to a forfeiture of the lease, at the discretion of the said commissioners or their successors in office; and the said Symon and Caldwell, for themselves, their heirs, executors, administrators, and assigns, covenant and agree to pay to the said commissioners or their successors seven per cent. of the net proceeds of all mineral *or* quarried in or upon said section; and finally the contracting parties agree that this lease shall be and is hereby confirmed for the period of ninety and nine years from the day and date above written, on the express condition that the dues shall be promptly paid over to the said commissioners and their successors, on the sale of the proceeds of the mine, and the said contracting parties have in confirmation set their hands and affixed their seals.

B. C. DUGGER, [SEAL.]
SAMUEL DENTON, [SEAL.]
JAMES H. LEWING, [SEAL.]
JOHN CARDWELL, [SEAL.]
JAMES V. SYMONS. [SEAL.]

In presence of—
JOHNSTON SUIT,
RALPH SUIT.

The words, and John Cardwell, six months, interlined before signed and acknowledged by said parties.

JAMES V. SYMONS,
JOHN CARDWELL,
B. C. DUGGER, [SEAL.]
SAMUEL DENTON. [SEAL.]

STATE OF TENNESSEE,
Polk County.

Personally appeared before me Emmons P. Douglass, clerk of the county court for the county of Polk, Benjamin C. Dugger, Samuel Denton, and James Lewing, common school commissioners, lessors, and John Caldwell and James V. Symons, lessees, the within named parties, and acknowledged the due execution of their signatures to the within lease or articles of contract, for the purposes therein contained.

Witness my hand at office, in Benton, July 6th, 1850.

E. P. DOUGLASS, *Clerk.*

STATE OF TENNESSEE,
Polk County.

July 6th, 1850, 10 o'clock a. m.

Then was the foregoing lease and clerk's certificate noted in

note-book A, registered in my office, in Benton, in book C, pages 200, 201.

ROB'T N. FLEMING, *Register.*

Register's fee, $0 75, p'd.

STATE OF TENNESSEE,
Polk County.

October 11th, 1853, 5 o'clock p. m.

Then was the foregoing lease, together with the clerk's and register's certificate, as annexed to the foregoing transfer of indenture of lease, noted therewith in the same note-book A, page 114, registered in my office, in Benton, in book E, pages 45, 46.

ROB'T N. FLEMING, *Register.*

Register's fee, $0 87½.

Assignment of Lease.

We, James V. Symons and John Caldwell, for in consideration of the sum of one thousand dollars to us in hand paid, the receipt whereof is hereby acknowledged, have this day bargained and sold, and do hereby transfer, convey, and assign to Samuel Congdon, agent for Charles Congdon, his associates, of New York, their representatives and assigns, all the right, title, and interest, that we or either of us have, in and to the sixteenth section, fractional township four south, range five east, of the basis line, in the Ocoee district, Polk county, Tennessee, under and by virtue of a lease for ninety and nine years, executed to us by the school commissioners of said district No. 8, in Polk county aforesaid, bearing date the 21st day of May, A. D. 1850, hereby conferring upon and assigning to the said Congdon, as agent as aforesaid, all the rights, privileges, and benefits secured to us by said article of lease, and subjecting him as said agent to all the burthens and liabilities incurred by us through and under the same, and we bind ourselves to deliver immediate possession of said leased premises, whenever called for.

Witness our hands and seals this ninth day, of June, A. D. 1851.

JOHN CALDWELL, [SEAL.]
JAMES V. SYMONS. [SEAL.]

Witness: A. M. KELDIN,
J. W. LILLARD.

STATE OF TENNESSEE,
Polk County.

Personally appeared before me, Geo. W. Mayo, clerk of the county court of said county, John Caldwell and James V. Symons, the bargainor to the foregoing deed of conveyance, with whom I am personally acquainted, and who acknowledged the due execution of the same on the day and year it bears date, and for the pur-

poses therein expressed, certified for registration in Polk county, Tennessee.

Given under my hand at office, at Athens, the 10th day of June, 1851.

GEO. W. MAYO, *Clerk.*

STATE OF TENNESSEE,
Polk County.

October 6th, 1851, 10 o'clock a. m.

Then was the foregoing assignment of lease, together with the clerk's certificate, noted in note-book A, page 88, registered in my office, in Benton, in book C, page 390.

ROBT. N. FLEMING,
Register.

Register's fee, $0 75.

STATE OF TENNESSEE,
Polk County.

October 11th, 1853, 5 o'clock p. m.

Then was the foregoing transfer or assignment of lease, together with the clerk's and register's certerficates, as annexed to the foregoing transfer of indenture of lease, noted therewith in the same in note-book A, page 114, registered in my office, in Benton, in book E, pages 47, 48.

ROBT. N. FLEMING,
Register.

Register's fee, $0 87½.

STATE OF TENNESSEE,
Polk County.

October 11th, 1853, 5 o'clock p. m.

Then was the foregoing transfer of indenture of lease from Charles Congdon to the Tennessee Mining Company, together with the commissioner's and register's certificates thereto, together with the lease from the common school commissioners to Caldwell & Symons, and the transfer or assignment from Caldwell & Symons to Samuel Congdon, agent of Charles Congdon, &c., with the clerk's and register's certificates respectively thereto, and separately and severally certified, annexed to and forming a part of the said transfer of indenture of lease made from Charles Congdon to the Tennessee Mining Company, all noted as a transfer of indenture of lease in note-book A, page 114, registered in my office, in Benton, in book E, pages (altogether) 43, 48.

ROBT. N. FLEMING,
Register.

Register's fee altogether, $2 62½.

STATE OF TENNESSEE,
Polk County.

I, Robt. N. Fleming, register in and for the county and State aforesaid, hereby certify that the foregoing is a true and correct copy of the foregoing instrument or instruments named therein, severally and collectively, and of the commissioner's, clerk's and register's certificates respectively thereto, as remaining of record in my office.

Given under my hand at office, in Benton, this 22d day of February, 1856.

ROBT. N. FLEMING,
Register.

Register's fee, $2 75 p'd.

Copy No. 5.

This indenture, made the twelfth day of September, in the year one thousand eight hundred and fifty-three, between Charles Congdon, of the city of Brooklyn, county of Kings, and State of New York, merchant, party of the first part, and the Tennessee Mining Company, a corporation duly constituted and established in the State of Tennessee under an act of the legislature of that State, entitled "An act to incorporate the Tennessee Mining Company," passed February 25th, 1852, party of the second part, witnesseth: that the said party of the first for and in consideration of the sum of fifty thousand dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, at or before the ensealing or delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, forever released and discharged from the same, by these presents hath granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part, and to their successors and assigns forever, all those certain lands situated in Ocoee district, Polk county, Tennessee, bounded and described as follows, viz: the sixteenth section fractional township four south, and range five east, of the basis line, Ocoee district, said section being bounded west and south by the lands of Benjamin C. Dugger, and east and north by Waterhouse and others, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the same and every part and parcel there-

of, with the appurtenances, unto the said party of the second part, their successors and assigns, to their own proper uses, benefit, and behoof forever. And the said Charles Congdon, party of the first part, does hereby covenant, grant, and agree to and with the said party of the second part, their successors and assigns, that the said Charles Congdon, at the time of the sealing and delivery of these presents, is lawfully seized in his own right of a good, absolute, and indefeasible estate of inheritance in fee simple, of, and in all and *signeor*, the above granted, bargained, and described premises, with the appurtenances, and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid; and that the said party of the second part, their successors and assigns, shall and may at all times hereafter peaceably and quietly have, hold, use, occupy, possess, and enjoy the above granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, evictions or disturbance of the said party of the first part, his heirs or assigns, or of any other person or persons lawfully claiming, or to claim, the same; and that the same now are free, clear, discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and incumbrances of what nature or kind soever; and also that the said party of the first *party*, and his heirs, and all and every other person or persons whomsoever lawfully or equitably claiming any estate, right, title, or interest of, in, or to the hereinbefore granted premises, by, from, under, or in trust for him or them, shall and will at any time or times hereafter, upon the reasonable request, and at the proper costs and charges, in the law of the said party of the second part, their successors and assigns, make, do, and executed all and every such further and lawful and reasonable acts, conveyances, assurances in the law, for the better and more effectually vesting and confirming the premises hereby intended to be granted in and to the said party of the second part, their successors and assigns forever, as by the said party of the second part, their successors or assigns, or their counsel, learned in the law, shall be reasonably *creused*, advised. *onequnld*, and the said party of the first part, the above described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, their successors and assigns, against the said party of the first part and his assigns, and against all and every person and persons whomsoever lawfully claiming or to claim the same, shall and will warrant, by these presents forever defend.

In witness whereof, the said party of the first part hereto hath

hereunto set his hand and seal, the day and year first above written.

CHARLES CONGDON. [SEAL.]

Sealed and delivered in the presence of—
GEO. MARSALL,
LEBBEUS CHAPMAN, JR.

STATE OF NEW YORK,
City and County of New York, ss.

Be it remembered, that this 13th day of September, A. D. 1853, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Tennessee, to take acknowledgments, &c., personally appeared Charles Congdon, known to me to be the individual who is described in and who executed the foregoing instrument, and who acknowledged to me that he executed the same as his free act and deed, and for the uses and purposes therein expressed and contained.

In witness whereof, I have hereunto set my hand and affixed my official seal, at the said city of New York, the day and year last above written. [L. S.]

LEBBEUS CHAPMAN, JR.,
Commissioner for Tennessee.

STATE OF TENNESSEE,
Polk County.

October 11, 1853, 5 o'clock p. m.

Then was the foregoing deed of conveyance, together with the commissioner's certificate, noted in note-book A, page 114, registered in my office, in Benton, in book E, pages 48, 50.

ROBT. N. FLEMING,
Register.

State tax.....	$0 96
Register's fee.....	1 00
	1 96

STATE OF TENNESSEE,
Polk County.

I, Robt. N. Fleming, register in and for the county and State aforesaid, hereby certify that the foregoing is a true and correct copy of the deed of conveyance named therein, and of the commissioner's and register's certificates thereto, as remaining of record in my office.

Given under my hand at office, in Benton, this 22d day of February, 1856.

ROBT. N. FLEMING,
Register.

Register's fee, 1 12½.

CALDWELL & SYMONS
vs.
B. C. DUGGER et al.;
And
THOMAS C. LYON and Others
vs.
CALDWELL & SYMONS et al.

Or. and Amended Bill and Cross-Bill.

Complainants in this original bill appeared, by their solicitor, James B. Cook, esq., and dismissed their original and amended bills; it is therefore ordered that complainants in said original and amended bills pay all the costs of said causes for which execution may issue; and the complainants in said cross-bill appeared, by their solicitor, and dismissed said cross-bill; it is therefore ordered by the court that the defendants recover of the complainants in said cross-bill all the costs in that behalf expressed, for which execution may issue.

THE STATE OF TENNESSEE.

I, William Lowry, clerk and master of the chancery court at Athens, Tennessee, do certify that the above is a true and perfect copy of the final decree pronounced in said causes at the August term, 1852, of said court, as the same appears of record in my office.

Given under my hand at office, in Athens, this 21st day of October, 1856.

WM. LOWRY, SR., *C. and M.*
By WILLIE LOWRY, *D. C. and M.*

February Term, 1850, Circuit Court, Polk County.

William S. Conner returned into court the following proceedings had in relation to the sale of the school land in fractional township 4 south, range 5 east, of the basis line, Ocoee district, to wit: For the sale of the school land, Henry Barker, M. H. Hancock, Samuel Denton, John Foster, Thomas Denton, Jonas Denton, Moses R. Denton, Nathan Mathews, Jefferson Allen, John Chastain, A. W. Roberts, John Testal, Yancy S. Bledsoe, John Rodgers, Anderson Conner, Jacob Graves, Johnston Suit, *Johnston Suit*, John Helton, John Conner, Sutton Miller, Archibald McKay, Thomas Carter, Patrick Nash, William H. Hancock, Elias Davis, Jackson Carter, Hiram Robertson, T. J. Kimsey, W.

B. Sims, A. B. Campbell, Neal McCoy, Wilson Abercrombie, Nelson Carter, Baily B. McCoy, George McClendon, Anderson Conner, Frederick Carter, Emanuel Turmon, A. McBee, B. A. Hyde, George M. Coleman, John Kirby, William Kimsey.

Against the sale of the school lands, Jesse Wallace, James Walden, Erby Dye, Crawford Braswell, William Hancock, John Davis, Allen A. Green, John Durin, John Dunn, Elijah Thurman, Calvin Y. Thurman, William Thurman, J. M. Thurman, William McCoy, William Donalson, James A. Davis, W. J. Harbin, T. T. Simms, James H. Leming, Reuben Gunter, William Crawford, David Cross, William Thurman, Thomas McCoy, B. C. Dugger, T. Smallwood, Allen Thurman, William Turman.

The undersigned, commissioner of the school land for fractional township fourth, range five east, of the basis line, Ocoee district, in the county of Polk, do hereby certify that he has been appointed by the county court of Polk county to ascertain the wishes of the voters of said fractional township, in relation to the sale of the school land therein situated; that the foregoing is the vote of the people of said township; that all persons voting are citizens of said township, qualified to vote for members of the general assembly, and that the persons voting for the sale of the school land constitute a majority of all the qualified voters of said township.

WILLIAM S. CONNER.

Sworn to and subscribed before me, this 13 Feb'y, 1850.

JAMES SMITH, *Clerk.*

And it appearing to the satisfaction of the court that the said William S. Conner has been legally appointed by the county court of Polk county to ascertain the wish of the people of said township in relation to said school lands, and from the examination on oath of the said commissioner that he has proceeded to ascertain the same, and that their signatures have been fairly taken, and their sentiments truly expressed and impartially obtained, and also from the return of said commissioners, that a majority of the qualified voters in said township are in favor of selling the same, it is ordered and decreed by the court that the school lands situate in said township be sold by the clerk of this court, as the acts of the general assembly in such cases made and provided direct, and that he notify the county court at its first quarterly session, to the end that they may appoint commissioners to value said lands, and he report to the next term of this court all the proceedings had in regard to the sale of said lands.

October Term, 1850.

Oct. 17, 1856. This day, the clerk of this court reports to court the following papers and proceeding had in relation to the sale of school land, to wit: Pursuant to an order of the county court at the

April session, 1850, appointing us a committee to examine and report the value of the school lands of the 8th civil district of Polk county, for the fourth fractional township south, range five east, of the basis line, Ocoee district, and *and* after careful examination, we make the following report, to wit:

The southeast quarter at.....	$60
The northeast quarter at.....	200
The southwest quarter at.....	40
The northwest quarter at.....	120
	$420

May the 3d, 1850.

HENRY BARKER,
JOHNSTON SUIT,
JOHN KIRBY.

Pursuant to an order of the circuit court for the county of Polk, and State of Tennessee, at the February term, 1850, I proceeded to advertise and sell the section of school land for the fourth fractional township south, range five east, of the basis line, Ocoee district. Said lands were valued by Henry Barker, Johnston Suit and John Kirby, as follows:

The southeast quarter to.....	$60
The northeast quarter "	200
The southwest " "	40
The northwest " "	120
	$420

Said lands were advertised as the law directs; and after advertising the same, I was served with an injunction issued from the chancery court at Athens, McMinn county, Tennessee, thereby enjoining and restraining me from disposing of, in any way, the interest that may have accrued to James V. Symons and John Caldwell under a lease taken by them from the common school commissioners for said fractional township of said school lands for mining purposes; and afterwards, to wit, on the 26th day of July, 1850, according to advertisement, I proceeded to sell said lands as the law directs; whereupon said lease taken by Symons and Caldwell as aforesaid was publicly read, also the injunction aforesaid was publicly read, and a reserve made of the interest that may have accrued thereby to the Symons and Caldwell; and at the request of the said commissioners, a special reserve was made of the profits arising from said lease to the school commissioners, and their successors in office, for the use of the township, and therefore the remaining interest, if any, was offered for *for* sale to the highest bidder, and Euclid Waterhouse, Thomas C. Lyon, Thomas

H. Callaway, John B. Tipton and Samuel H. Johnston became the purchasers, they being the highest and best bidders, as follows, to wit:

The southeast quarter	at		$404
The southwest	"	"	206
The northeast	"	"	779
The northwest	"	"	381
			1,770

One eighth part of the purchase money was paid in advance, and bond and security taken for the remainder as the law directs, which is to remain a lien upon the lands for the payment thereof, which said money, bonds, &c., were delivered to the branch of the Bank of Tennessee, at Athens, 13th August, 1850. All of which is respectfully submitted.

JAMES SMITH, *Clerk.*

BRANCH BANK OF TENNESSEE,
Athens, 13*th Aug.*, 1850.

Received of James Smith, clerk of the circuit court of Polk county, Tennessee, a statement of the sale of the section of school land in township 4 so., range five east, of the basis line, in the Ocoee district, Polk county, together with bonds and obligations, accompanied with powers of attorney, for the sum of fifteen hundred and forty-eight dollars and 75 cents, and also the sum of two hundred and twenty-one dollars and 25 cents in cash, making altogether the sum of one thousand seven hundred and seventy dollars, the amount for which said return of school land sold, as appears from said statement.

THOS. J. CAMPBELL, JR., *Cash'r.*

And it appearing to the court from the foregoing report, that an injunction has been served upon the clerk of this court, and not knowing the extent of said injunction, all further action is suspended in relation to said sale of said lands, until some further order of the court.

October Term, 1852.—10th Oct., 1852.

This day came on for action the report of the clerk of this court made in relation to the sale of the school lands in the fourth fractional township south, range five east, of the basis line, Ocoee district, Polk county, Tennessee, and it appearing to the court that the report of the clerk of this court was made at the October term, 1850, of this court, and spread on the records at said term of the court, and that final action had been suspended on account of an injunction having issued from the chancery court at Athens, Tennessee, enjoining further proceedings in relation to said sale until

the action of said chancery court at Athens, Tennessee, in the case of Caldwell and Symons against Dugger and others, should be known, and it appearing to the court from a certified copy of the records of said chancery court, that the said Caldwell and Symons have dismissed their bill, and that the injunction is dissolved and fully ended, it is therefore ordered by the court that said report of the clerk of this court made and spread of record at the October term, 1850, of this court, as aforesaid, being unaccepted to, in all things by this court confirmed, and that the parties stand in the attitude as though the injunction had never issued or been granted.

The foregoing is a true copy of the records of the circuit court carefully compared and corrected.

May 27, 1856.

JAMES SMITH, *Clerk.*

County Court, Feb'y term, 1850.

A return of an election in the 4th F. T., range 5 east, basis line, Ocoee dist., for and against the sale of the school land, was received by the court, and appears to have failed to decide either for or against the sale of said land, whereupon the court proceeded to appoint William Conner as a commissioner to individually receive the vote of the 4th fr. town., range 5 E., basis, relative to the sale of said land.

April Session, 1850.

John Kirky, Henry Baker, and Johnston Suit were appointed comm'r to value the school land, range 5 E., B., O. D., 4th Fr. T., Sc.

The above is a true copy of the records of the county court carefully compared.

JAMES SMITH,
Clerk Circuit Court.

The following bill was filed 29th June, 1850, in the chancery court, at Athens, Tennessee, to wit:

To the Honorable Thomas L. Williams, Chancellor, &c.

Humbly complaining, your orator, John Caldwell, a citizen of the county of Sevier, in the State of Tennessee, and James V. Symons, a citizen of Roane county, in the State of Tennessee, represent to your honor, that by an act of the general assembly of the State of Tennessee, passed at Nashville, on the 4th day of Feb'y, 1850, chapter 181, section 5, the common school commissioners in the county of Polk, in said State, were authorized to lease for mining purposes any school lands unsold in said county, and to make such leases as, in their judgment, would be most conducive to the interest of the common schools in said county of Polk.

Your orators further represent, that the sixteenth section of fractional township four south, and range five east, of the basis line, in the Ocoee district, is a section of school land unsold in the county of Polk aforesaid.

Your orators further represent, that on the twenty-first day of May, 1850, Benjamin C. Dugger, James H. Leming, and Samuel Denton were and still are common school commissioners in and for the eighth civil district in the county of Polk aforesaid, duly commissioned and acting as such, and that said sixteenth section of school land above described is situate in said eighth civil district.

Your orators further state and show, that from divers indications, as well as from actual tests made upon lands immediately adjoining said section of school land, it was believed to contain divers valuable mineral substances, but particularly copper ore.

Your orators further represent, that in pursuance of the power vested in said commissioners by said act of assembly above referred to, and convinced that the same would be for the interest of common schools in said county of Polk, as well as will be hereinafter more fully shown, did proceed on the said 21st day of May, 1850, to make and execute to and with your orators the certain covenant of lease in writing, properly signed and sealed by said commissioners, and duly attested, which said lease in writing has been duly proven and registered in the register's office in the county of Polk aforesaid, a copy of which hereto annexed, marked Exhibit A, and made part of this bill, by which said lease there is granted unto your orators, their heirs and assigns, the privilege of searching and mining upon said section for fossil and mineral substances to any extent they may choose, for the term of ninety and nine years, they paying to said common school commissioners and their successors seven per cent. of the net proceeds of all mineral and fossil substances mined or quarried in or upon said section of school land, together with other minor stipulations, which will fully appear by reference to said Exhibit "A."

Your orators further state, that such proceedings have been had, in relation to said section of school land, since the passage of said act of assembly, that by an order of the circuit court of Polk county, Tennessee, made at the Feb'y term, and revived at the June term, 1850, of said court, the same is decreed to be sold, and advertised by the clerk of said court for sale on the 26th day of July, 1850, without any reference to or reservation of the mining privileges secured to your orators by their said lease as aforesaid. As to the means and influences resorted to procure said decree, your orators deem it unnecessary here to make any statement, as it is not intended to impeach said decree any further than the same is in conflict with and in violation of the vested right of your orators.

Your orators further state, that although no account or estimate

was taken or made by the commissioners appointed to assess the value of said school land of its probable mineral contents, yet they are set forth by the clerk in his said advertisement as an inducement for persons to appear and bid for said land at said sale.

Your orators further state, that in pursuance of their said lease they *they* have entered upon said land, and from actual experiment and observation are fully satisfied that the same contains large and valuable veins of copper ore, such as, if they are permitted to enjoy unmolested the rights and privileges conferred by their said lease, will, in their judgment, not only be of benefit to themselves, but also of immense benefit to the scholastic interest of said district, and which, if sold in pursuance of said decree, will not only be a gross violation of their rights, and work manifest injustice to them, but also do great injustice to the cause of education, for which said land has been assigned, as it is not probable, that if so sold, it will bring a tithe of its real value; but as complainants are advised that this cannot affect their rights, they refrain from any further statement in regard to it.

Your orators charge, that by the provisions of said act of assembly, said common school commissioners were duly and fully authorized and empowered to execute said lease for the purposes aforesaid at any time before said land was sold; that said lease was duly and in good faith executed to them for the purposes therein expressed; that by virtue of said lease they have the right to enter upon and hold said land for all mining purposes, to the exclusion of all others, during the term expressed in said lease; that if said lands are sold in pursuance of said decree, and as advertised by said clerk, it will be manifestly in fraud and violation of the rights of your orators; but, as your orators are aware that it was only the intention of the legislature to extend to said commissioners the power of leasing said land for mining purposes, and as that is the only interest intended to be conveyed, or that is claimed by them under said lease, they do not object to the sale of said land subject to the rights and privileges granted them under and by virtue of their said lease as aforesaid, which they aver is still in full force and effect, and which has not been surrendered or cancelled, or by them in any way whatever forfeited or avoided. The premises considered, and inasmuch as your orators are without *save* in a court of equity, where matters of this kind are particularly cognizable, your orators pray that the said Benjamin C. Dugger, James H. Leming, Samuel Denton, common school commissioners for, and citizens of, the county of Polk aforesaid, and the said James Smith, a citizen of and clerk of the circuit court of the county of Polk aforesaid, and all others that may be made necessary, be made parties defendants to this bill, and that they answer its several alle-

gations as fully as if they were herein again expressed, and they thereunto particularly interrogated, and said decree of said circuit court enjoined so far as it conflicts or interferes with the rights of complainants, and that said james Smith, clerk as aforesaid, be enjoined from executing the same so far as it interferes with their rights as aforesaid, and that writs of injunction issue out of the chancery court at Athens, Tennessee, directed, &c., restraining said clerk and all others from executing said decree, or in any manner interfering with the rights of your orators; and upon the final hearing of this cause, that said injunction be made perpetual, and that said decree of said circuit court of Polk county aforesaid be so modified, that if said lands are sold, that they sold subject to all the rights and privileges secured to your orators under said lease; and if mistaken in their special prayer, they pray for such other and further relief as in equity, from the nature of their case, they are entitled to, and to this *and* let copies and subpœnas issue, and all other process and precepts necessary issue, directed, &c., commanding, &c., returnable to the chancery court at Athens, McMinn county, Tennessee. And your orators will forever pray, &c.

JOHN CALDWELL,
JAMES V. SYMONS.

J. B. Cook,
Sol. for Compl'ts.

State of Tennessee,
McMinn County.

Personally appeared before me, Charles F. Keith, of the third judicial circuit in the State of Tennessee, John Caldwell, one of the above named compl'ts, and made oath that the facts stated in the above bill of his own knowledge are true, and those stated upon information of others he believes to be true.

JOHN CALDWELL.

Sworn to and subscribed before me, this June 28, 1850.

CHARLES F. KEITH,
Judge, &c.

State of Tennessee.

To the Clerk and Master of the Chancery Court at Athens, McMinn county:

Let writs of injunction, subpœnas, and copies of the foregoing bill issue according to the prayer thereof, upon compl'ts giving bond and security as prescribed by law and the rules of the court. Given under my hand this 28th day of June, 1850.

CHARLES F. KEITH,
One of the Judges of the Circuit
Court of Law in the State of Tennessee.

Exhibit "A."

This indenture, made and entered into this 21st day of May, 1850, by and between Benjamin C. Dugger, James H. Leming and Samuel Denton, school commissioners, district No. 8, in the civil division of Polk county, Tennesse, of the first part, and James V. Symons and John Caldwell of the second part, witnesseth: that for and in consideration of the covenants and agreement hereinafter expressed, the said commissioners hath, on the day and date above written, and by these presents convey and confirm to the said James V. Symons and John Caldwell, their heirs, executors or assigns, of entering in and upon the sixteenth section, fractional township 4 south, and range 5 east, of the basis line, Ocoee district, said section being bounded west and south by the lands of Benjamin C. Dugger, and east and north by Waterhouse and others; and the said Symons and Caldwell, as above stated, are by these presents secured in the privilege of searching for minerals and fossil substances to any extent they may deem advisable, but not hold possession of any part of said land for any other purpose, except so far as water-power and wood for mining purposes may be necessary; and the contracting parties covenant and agree that no damage shall be done in or upon said lands, other than may be necessary in conducting said operations; and the contracting parties further agree that, should no mineral or fossil substances be mined or quarried as now contemplated in the space of six months from the day and date above written, or should the mining operations cease at any one time for the space of six months, in either case it shall amount to a forfeiture of the lease, at the discretion of said commissioners or their successors in office; and the said Symons and Caldwell, for themselves, their heirs, executors, administrators and assigns, covenant and agree to pay to the said commissioners and their successors seven per cent. of the net proceeds of all mineral and fossil substances mined or quarried in or upon said section; and finally, the contracting parties agree that the lease shall be, and is hereby confirmed for the period of ninety and nine years from the day and date above written, on the express condition that the dues shall be promptly paid over to the said commissioners and their successors on the sale of the proceeds of the mine; and the said contracting have, in confirmation, set their hands and affixed their seals.

B. C. DUGGER, [SEAL.]
SAMUEL DENTON, [SEAL.]
JAMES LEMING, [SEAL.]
JOHN CALDWELL, [SEAL.]
JAMES V. SYMONS. [SEAL.]

Test: JOHNSTON SUIT,
RALPH SUIT.

Demurrer of James H. Leming.

JOHN CALDWELL, JAMES V. SIMONS,
vs.
BENJAMIN C. DUGGER, JAMES H. LEMING, SAMUEL DENTON, Commissioners, &c.

Saving, by protestation, &c. &c., the defendant, James H. Leming, now comes and says the matters and things set forth in compl'ts' said bill of complaint are insufficient in law to entitle them to any relief or discovery as against this defendant, and he shows to the court here the following cause of demurrer:

1st. Said bill shows no equity on which to ground any decree against the defendant in favor of complainants.

2d. Said bill discloses on its face, that on and before the 21st day of May, 1850, the date of the alleged lease of the land in question to complainants, they were ordered to be sold in accordance to law by a decree of the proper court, without any reserve or restriction. For this and other reasons this defendant demurs to said bill, and prays the judgment to this hon. court.

Filed 19th August, 1850.

JAMES H. LEMING,
By his Att'y, G. W. ROWLES.

Answer of James Smith.

The separate answer of James Smith to the bill of complainant filed against him and B. C. Dugger, James H. Leming, and Samuel Denton, in the chancery court at Athens, McMinn county, Tennessee, by John Caldwell and James V. Symons.

This respondent, saving and reserving to himself the usual benefit of exceptions to the complainants' said bill of complaint, for answer thereto, or so much thereof as he is advised is material for him to respond unto, answers and says, that the February term of the circuit court of Polk county, 1850, William S. Conner, as it appears, was a special commissioner, appointed by the county court of Polk county, in pursuance of the power vested in said court, by an act of the general assembly of the State of Tennessee, passed 25th of January, 1846, providing for the sale of the common school lands in the State of Tennessee, returned the votes of a majority of the qualified voters of the 4th fractional township south, range 5 east, of the basis line, Ocoee district, in the eighth civil district of Polk county, as having voted in favor of the sale of the section of school land in said fractional township; and thereupon the Hon. E. Alexander, presiding judge at the said circuit court of Polk county, decreed the sale of said section of school land, and that this respondent should proceed, as circuit court clerk of Polk county, to advertise and sell said school land, according to the act of assembly made and provided

for that purpose, in pursuance of which order and decree this respondent did advertise said section of school land for sale, according to law, on the 26th day of July, 1850, before which day of sale this respondent was served with a writ of injunction, enjoining and restraining him from selling or in any way disposing of any rights which had or might accrue to John Cardwell and James V. Symons, who claimed to be lessees of the common school commissioners of said township, who, as it appears from Exhibit A accompanying complainants' bill, had leased a mining privilege in said land for the term of ninety and nine years, under an act of the general assembly of the State of Tennessee, passed February 4th, 1850. This respondent, in pursuance of the decree of the circuit court of Polk county, and as the clerk of the circuit court of Polk county aforesaid, proceeded to sell, and did sell and dispose of said section of school land on the premises, on the 26th day of July, 1850, according to said advertisement, after reading publicly the original lease, a copy of which is here shown as Exhibit A, and the injunction, and publicly reserving the interest which might have accrued to the said Caldwell and Symons as lessees, &c.; and the said land being offered for sale by this respondent with the aforementioned reservation and incumbrance, Euclid Waterhouse, Thomas H. Calaway, Thomas C. Lyon, John B. Tipton and Samuel H. Johnston became the purchasers at the price of seventeen hundred and seventy dollars, it being the best bid.

How far the interest of the scholastic population of Polk county could be advanced by the said lease, giving the aforesaid mining privileges, this respondent knows nothing about. And now this respondent having fully answered all the material allegations in complainants' said bill, or all that he is advised is material for him to answer unto, prays that complainants' bill be dismissed, the injunction dissolved, and this respondent be discharged, with his reasonable costs decreed to him.

J. R. BUCHANAN,
Sol. for Respondent.

STATE OF TENNESSEE,
McMinn County.

Personally appeared before me, William Lowry, clerk and master of the chancery court at Athens, James Smith, who makes oath that the facts set forth in the foregoing answer of his own knowledge are true, and those stated on the information of others he believes to be true.

JAMES SMITH.

Sworn to and subscribed before me, this 19th Aug., 1850.
WM. LOWRY, *C and M.*

Filed August 19, 1850.

Answer of Samuel Denton and B. C. Dugger, filed 22d January, 1851.

STATE OF TENNESSEE, POLK COUNTY,
January 18th, 1851.

To the Honorable Thomas L. Williams, Chancellor, at Athens, Tennessee, Feb. term:

Your orators, acting school commissioners for fractional township four south, and range five east, of the basis line, Ocoee district, Polk county, having been summoned to appear at Athens, the summons being served only on B. C. Dugger, your orators not knowing through whose agency they had been called, or what important result could be attained, have deferred their answer until the present. Now, in view of all the interests involved in a case that we are informed is pending before your honor, your orators would respectfully submit a synopsis of the proceedings of the last year, in reference to our school property. Some time, we believe in the early part of February last, James V. Symons, an Englishman, skilled in *metalogy*, and John Caldwell, of Sevier county, of this State, came to Ducktown, and proceeded to examine the school land, and report on the same. A public meeting was called, and the people were informed that a vein or lead of copper traversed a cut through the school section near its centre. This report was published to all present, amounting perhaps to , and an agreement was entered into that if Caldwell and Symons would procure the passage of a law authorizing the commissioners to give a mining lease, they should have a lease at six per cent. of net proceeds. The said Caldwell, as we are informed and believe, went to Nashville and obtained the passage of a law, under which your orators, when they came into office, felt themselves fully competent to give the lease in question. Your orators would further state, that after it was publicly rumored that the school lot contained copper, one of your orators was informed that seven per cent. would be given by another party, and when your came to close the contract with Symons and Caldwell, this proposition was spoken of, and the lease was closed at seven per cent. Your orators have nothing to say in reference to the sale of the school land, further than to state, that so far as they are informed by the commissioners who valued the land, there was an agreement amongst these commissioners that they had nothing to do but fix an estimate of its agricultural purposes. In conclusion, the lease to Symons and Caldwell was given by us in good faith, and been by them prosecuted in good faith, with *lattering* prospects of success; and so far as our observation is concerned, we feel that our course is sustained by the law and by the township, reserving that what we have stated of our own know-

ledge is true, and what we have stated on information we believe to be true. The above is submitted.

SAMUEL DENTON,
B. C. DUGGER,
Commissioners.

Sworn to and subscribed before me, an acting justice of the peace for Polk county, on the day and date above written.

Test: ELIAS DAVIS,
Justice of the Peace.

Amended Bill.

To the Honorable Thomas L. Williams, Chancellor, &c.

Humbly complaining, your orators, John Caldwell, citizen of Sevier county, Tennessee, and James V. Symons, a citizen of Roane county, Tennessee, represent to your honor, that on the 29th day of June, 1850, they filed their original and injunction bill in the chancery court at Athens, McMinn county, Tennessee, against Benjamin C. Dugger, Samuel Denton, and James Leming, common school commissioner for the 8th civil district, in the county of Polk and State aforesaid, and *and* James Smith, clerk of the circuit court of said county of Polk, and all others necessary to be made parties to said bill, charging, among other things, that they, the said common school commissioners, by virtue of the power in them vested by an act of the general assembly of the State of Tennessee, passed at Nashville, on the 4th day of February, 1850, did, on the 21st day of May, 1850, lease to your orators a certain tract or parcel of land, being a section or parcel of school land in the 8th civil district, in said county of Polk, being the sixteenth section of fractional township four south, range five east, of the basis line, in the Ocoee district, for mining purposes, for and during the term of ninety and nine years from and next after the said 21st day of May, 1850; which said indenture of lease was exhibited to said bill, marked A; that from divers indications said tract of land promised valuable yield of divers metals, but particularly copper ore; that after the passage of said act of assembly, such proceedings had been had in relation to said section of school land, that by an order or interlocutory decree of the circuit court of said county of Polk, made at the February and rendered at the June term, 1850, of said court, the same was decreed to be sold and advertised by the clerk of said court for sale, on the 26th day of June, 1850, without any reference to, or reservation of, the rights and privileges secured to, and vested in, your orators by their said lease; and that, although no account or estimate was taken by the commissioners appointed to value said school land, of its probable mineral contents, yet they were set forth by said clerk, in his said

advertisement, as inducement for persons to appear and bid for said land at said sale; among other things, by the prayer of said bill, was an injunction to be served upon said clerk, James Smith, restraining him from in any manner selling or disposing of said land, so as to affect the interest accrued to your orators under and by virtue of said lease of ninety and nine years; which said injunction was granted, issued, and served upon said clerk before the time appointed by himself for the sale of said school land. Now, it so is, may it please your honor, that the said James Smith, clerk as aforesaid, notwithstanding said injunction had been duly served as before stated, did, on the 26th day of July, 1850, in pursuance of his said advertisement, proceed to sell said section of school land, after reading publicly said lease, and said injunction is stated in his answer to said bill; but instead of reserving unconditionally the lease for mining purposes of your orators to said land for 99 years, only reserved such right or interest as might accrue, or had accrued, to your orators under and by virtue of said lease, leaving the question still open, and a subject of litigation hereafter, as to whether any or what right did or had actually occurred to your orators under and by virtue of said lease, as will amply appear from the answer of said Smith, hereinbefore referred to, and also from the report of said clerk made to the hon. circuit court of Polk county, at the October term, 1850; which said report, in relation to the sale of said school land, is hereto annexed, marked Exhibit A, and made part of this bill; and although your orators do not believe the said respondent, Smith, intended any contempt of the honorable chancery court, or meditate any fraud upon the rights of your orators, and they here, so far as in them lies, especially exempt and acquit him of any such intention; yet your orators charge that said sale, in the way and manner the same was made, was in violation of the object sought to be obtained by said injunction, and also of the terms of said injunction itself, and manifestly violation of the rights of your orators. Your orators further state and charge, that notwithstanding the commissioners appointed to value said land did not assess the value of the whole of said section, exclusive of its mineral contents, to only about the sum of four hundred dollars, yet, on the said day of sale, a company, consisting of Euclid Waterhouse, a citizen of Murry county, in the State of Georgia, Thomas H. Callaway, a citizen of Bradly county, Tennessee, Thomas C. Lyon, a citizen of Knox county, Tennessee, John B. Tipton, Samuel M. Johnston, citizens of Monroe county, appeared, either by themselves or agents, and bid off said land sold as aforesaid, at and for the sum of sixteen hundred and seventy dollars, at least four times its real value, when regarded independent of its mineral contents; and your orators expressly charge, that said land was bid off at that price by said company with the view and for the purpose of contesting the rights

and privilege secured to your orators under and by virtue of thejr said lease; and your orators believe and charge, that they carry their *their* said intent into effect, unless restrained by your honor, and, if possible, to defeat the entire *claimed* in said land by your orators as aforesaid, and *theirs* cast a cloud upon and embarrass their said title. Your orators further state and charge, that upon the coming in of the report of the said clerk of the circuit court of Polk county, at the October term, 1850, in relation to the sale of said school land, the said purchasers, or some of them, by their attorney, appeared in said court, and insisted upon having said report confirmed; but, as it appeared from said report that said clerk had been in some manner enjoined in relation to it, said court refused to render up any decree in relation to the matter until further advised. Now, in relation to said interlocutory decree by which said sale was ordered by said circuit court of Polk county, made at its February term, 1850, and revived at *the at* its June term next following, your orators did not seek in their original bill, of which this is intended as amendatory, to impeach said decree any further than the same was in conflict with, and in violation of, their rights accrued to them under said covenant of lease; but your orators will now expressly state and charge, that no public election was ever held in said district under the laws of this State, providing for and authorizing the sale of the school lands; it is, or may be, true that at some time previous to said February term, 1851, of said circuit court of said county of Polk, the county court of said county did or may have appointed a certain William Conner a special commissioner, under and by virtue of an act of the general assembly of the State of Tennessee, passed June 22d, 1846, to ascertain the sense of the voters in said township, in reference to the sale of said school land, which said commissioner, William Conner, did proceed to take the *sens* of some of the voters of said township, in relation to the sale of said section of school land, as directed in and by said act of assembly; which said paper was returned by said William Conner, who is a citizen of Polk county, Tennessee, to the circuit court of said county of Polk, at the February term, 1850, accompanied with the usual certificate, a certified copy of which said paper, purporting to contain a list of the voters for and against the sale of said school land, together with said certificate, is hereto annexed, marked Exhibit "B," and made part of this amended bill; upon which said report and certificate, *and it may be the usual examination of said commissioner in open court*, said decree was rendered by said court for the sale of said school land. Now, your orators expressly state and charge, that the vote, as taken by the said William Conner, is the only vote ever taken in said township in relation to the sale of said school land, and is the identical vote upon which said interlocutory decree was founded. And your orators further expressly state and

charge, that said vote was not taken in compliance with the requirements of the act of assembly under which the same was directed to be taken by to said Exhibit "B." It will be seen that the names of 43 persons are returned by said commissioner as voting for the sale of said school land. Of this number your orators charge, that said paper contains the names of Nathan Mathews and Jefferson Allen, who were two qualified voters of said township at the time *at the time* said paper was returned to said circuit court, as voting in favor of the sale of said school land, when your orators the fact to be, that said paper never was presented to said Allen and Mathews, nor did they ever vote for the sale of said school land.

Your orators further state and charge, that said list also contains the names of Patrick Nash, A. B. Courtrell, and Emanuel Turmon and Sutton Miller, as voting for the sale of said school land, when, in truth and in fact, neither the said Patrick Nash, A. B. Courtrell, Emanuel Turmon, or Sutton Miller, were not persons qualified to vote in said election, said Nash being an unnaturalized foreigner, and the said Miller having been rendered infamous, and not having been restored to the rights of citizenship, A. B. Courtrell not having resided a sufficient length in the county, and Emanuel Turmon was a minor, which leaves, in reality, only 37 qualified voters, who actually *vote* for the sale of said school land. If it were admitted that all the others returnd as voting for sale were qualified to vote, which your orators by no means do, but claim the right to show that *any* of the other 37 above mentioned were entitled to vote, if the fact should turn out that way. On the other hand, by reference to said Exhibit "B," it will be seen that said commissioner returned the names of 28 qualified voters of said township as voting against the sale of said school land, whom your orators believe and charge to be qualified voters of said township at the time they voted against sale of said school land. In addition to which said 28 voters, your orators expressly state and charge, that B. A. Hide, Jefferson Allen, Nathan Mathews, George Mathews, Elijah Kirby, J. M. Kirby, Elisha Southerland, D. S. Dilbeck, M. W. Gass, Humphrey Kimsey, were persons duly qualified to vote in said election, residing in said district at the time said vote was returned by said commissioner to said circuit court, who did not vote, either for or against the sale of said school land. And so your orators expressly charge, that said paper was not presented to each voter of said township for his signature, in obedience to the requirement of said act of assembly; and they further positively charge, that a majority of the qualified voters of said township did not vote for the sale of said school land, but that those who did not vote at all, added to the number that actually voted against said sale, constitute a majority of all the qualified voters who actually resided in said township at

the time said vote was pretended to be taken and returned as aforesaid; and hence your orators charge that said list of voters and said certificate was made in bad faith, and returned in fraud of the rights and wishes of a majority of the qualified voters of said township, as will appear from said Exhibit B, together with the allegations in this amended bill, and that said decree was procured either by the mistakes or fraud of the said William Conner, and is therefore void, as the requirement of the law upon which alone it could have been rendered was not, nor has been, complied with. And so your orators again charge, that said lease was made to them in good faith, not only before said land was sold, but also before any valid decree had been rendered, ordering the sale of said school land; and inasmuch as they are likely to be harassed and greatly perplexed and oppressed, by reason of the premises, and are without relief, save in a court of equity, where matters of this kind are only cognisable in their said original bill, except wherein the *contained in their original bill, except wherein the* same are hereby charged and awarded, they pray that this may be filed and taken as an amendment to their said original and injunction bill; that the said original parties to said bill, to wit, Benjamin C. Dugger, Samuel Denton, James Leming, and James Smith, together with the said Euclid Waterhouse, Thomas H. Callaway, Thomas C. Lyon, John B. Tipton, Samuel M. Johnston, and William Conner, be made parties defendant to the amended bill, and that they answer the same as fully and completely as if the matters and things were herein again set forth, and they thereto specially interrogated; that an injunction issue to restrain said circuit court from rendering any decree upon said report of said clerk; that said interlocutory order and sale be set aside, and for naught held, and that they be permitted to occupy and enjoy their said lease, and all the rights and privileges accrued to them by virtue of the same, unmolested; and if mistaken in their particular prayer, they pray for such other and further relief as in equity, from the nature of their case, they are entitled; and to this end let all necessary process and precepts issue, directed, &c., commanding, restraining, &c., returnable to the proper term of the chancery court at Athens, Tennessee.

JOHN CALDWELL,
JAMES V. SYMONS,
By Sol., COOK.

COOK, *Sol. for Compl'ts.*

Personally appeared in open court John Caldwell, one of the foregoing complainants, and made oath that the facts set forth in the foregoing amended bill of his own knowledge are true, and those stated upon information he believes to be true.

JOHN CALDWELL.

Sworn to and subscribed in open court, Feb'y 18, 1851.
WM. LOWRY, *C. & M.*

Exhibit "A."

THURSDAY, 17*th October*, 1850.

Pursuant to an order of the circuit court for the county of Polk, and State of Tennessee, at the February term, 1850, I proceeded to advertise and sell the section of school land for the fourth fractional township south, range five east, of the basis line, Ocoee district. Said lands were valued by Henry Barker, Johnston Suits and John Kirby, as follows:

The southeast quarter to.....	$60 00
The northeast " "	200 00
The southwest " "	40 00
The northwest " "	120 00
	$420 00

Said lands were advertised as the law directs, and after advertising the same, I was served with an injunction issued from the chancery court at Athens, McMinn county, Tennessee, thereby enjoining and restraining me from disposing of, in any way, any interest that may have accrued to James V. Symons and John Caldwell, under a lease taken by them from the common school commissioners for said fractional township of said school land, for mining purposes; and afterwards, to wit, on the 26th day of July, 1850, according to advertisement, I proceeded to sell said lands as the law directs, whereupon said lease taken by Symons and Caldwell as aforesaid was publicly read, and a reserve made of the *the* interest that may have accrued thereby to the said Symons and Caldwell, and at the request of the said commissioners a special reserve was made of the profits arising from said lease to the school commissioners, as their successors in office, for the use of the township; and thereupon the remaining interest, if any, was offered for sale to the highest bidder, and Euclid Waterhouse, Thomas C. Lyon, Thomas H. Callaway, John B. Tipton and Samuel H. Johnston became the purchasers, being the highest and best bidders, as follows, to wit:

The southeast quarter at.....	$404
The southwest " "	206
The northeast " "	779
The northwest " "	381
	$1,770

One eighth part of the purchase money was paid in advance, and bond and security taken for the remainder as the law directs, which is

to remain a lien upon the land for the payment thereof, which said money, bonds, &c., were delivered to the branch of the Bank of Tennessee at Athens, 13th August, 1850. All of which is respectfully submitted.

JAMES SMITH, *Clerk.*

STATE OF TENNESSEE,
Polk County.

I, James Smith, clerk of the circuit court for the county and State aforesaid, certify that the foregoing is a true copy of the record now on file in my office.

Given under my hand at office in Benton, the 14th day of February, 1851.

JAMES SMITH, *Clerk.*

Exhibit "B."

For the sale of school land.

Henry Barker,
M. H. Hancock,
Samuel Denton,
John Foster,
Thomas Denton,
James Denton,
Moses R. Denton,
Nathan Mathews,
Jefferson Allen,
John Chastain,
A. W. Roberts,
John Testal,
Yancey S. Bledsoe,
John Rodgers,
Anderson Conner,
Jacob Graves,
Johnston Suit,
Johnston Suit,
John Shelton,
John Conner,
Archibald McKay.

For the sale of school land.

Sutton Miller,
Thomas Carter,
Patrick Nash,
W. W. Hancock,
Elias Davis,
Jackson Carter,
Hiram Roberts,
T. G. Kimsey,
Wm. B. Sims,
A. B. Campbell,
Neal McCoy,
Wilson Abercrombie,
Nelson Carter,
Bailey B. McCoy,
George McClendon,
Henderson Conner,
Frederick Carter,
Emanuel Turmon,
A. McBee,
George M. Coleman,
John Kirby,
William Kimsey.

Against the sale of the school land.

Jesse Wallice,
James Walden,
Early Dye,
Crawford Braswell,
Wm. Hancock,

Against the sale of school land.

James A. Davis,
W. J. Harbin,
J. J. Simmons,
James H. Leming,
Reuben Gunter,

John Davis,
Allen A. Green,
John Dume,
John Dunn,
Elijah Thurman,
Calvin Y. Thurman,
Wm. Thurman,
J. M. Thurman,
Wm. McCoy,
William Dawson.
Wm. Crawford,
David Cross,
William Thurman,
Thomas McCoy,
B. C. Dugger,
T. Smallwood,
Allen Thurman,
William Turmon.

The undersigned, commissioner of the school lands for fractional township fourth south, range five east, of the basis line, Ocoee district, in the county of Polk, do hereby certify that he has been appointed by the county court of Polk county to ascertain the wish of the voters of said township in relation to the sale of the school land therein situated; that the foregoing is the vote of the people of said township; that all the persons voting are citizens of said township, qualified to vote for members to the general assembly, and that the persons voting for the sale of the school land constitute a majority of all the qualified voters of said township.

WILLIAM CONNER.

Sworn to and subscribed before me, this 13th Feb'y, 1851.

JAMES SMITH, *Clerk.*

STATE OF TENNESSEE,
Polk County.

I, James Smith, clerk of the circuit court for the county and State aforesaid, certify that the foregoing is a true and perfect copy of the original return of William Conner in relation to the sale of school land, &c., filed 13th Feb., 1850, and now on file in my office.

Given under my hand at office, in Benton, this 5th December, 1850.

JAMES SMITH, *Clerk.*

Answer of James H. Leming, filed 13th August, 1851.

The separate answer of James H. Leming to the original and amended bill filed against him and others, in the chancery court at Athens, Tennessee, by John Caldwell and James V. Symons.

This respondent, saving and reserving to himself all benefit of exceptions to complainants' said bill, for answer thereto, or to so much thereof as he is advised as it is material for him to respond to, answers and says, it is true that on the 21st day of February, 1850, this respondent, B. C. Dugger, Samuel Denton and complainants entered into a written covenant of lease, a copy of which is exhibited to complainants' bill; at least respondent supposes it

be a true copy. This respondent and Dugger and Denton were acting as common school commissioners of the school section described in said bill; they had been but recently elected school commissioners of said township, before said covenant of lease was entered into; on the day the covenant bears date, the complainant, Caldwell, and one Wm. H. P. Hancock came to the house of this respondent, and the said Caldwell told respondent that he and Symons wished to lease upon said school land; that the land was about to be sold by the order of the court, and Johnston, Callaway and others would get it for little or nothing, and the township would be swindled out of it, and he believed the copper ore upon it was abundant, and there would not be children enough in the township to consume the money in the way of schools, provided he obtained the lease, if the ore was as good as he believed it was. At the request of Caldwell and Hancock, this respondent went with them to the house of said Dugger, where the said Caldwell wrote said covenant of lease, and he and the said Hancock urged upon said commissioners to sign it. This respondent told him that he did not believe the commissioners had the power to lease said school land, because the people had voted to sell it, and the court had decreed the land to be sold, and respondent was of the opinion that the commissioners had no power, in any manner whatever, to encumber said land after the people had voted for the sale, and the court had taken jurisdiction of it and ordered the sale, or words to that effect. The said Caldwell replied that that matter was his own, and if the lease should be void, it could not hurt the commissioners, and they would be in no danger, and he and Symons would give a bond to the commissioners to indemnify them against any liability for so doing. The commissioners had never seen the act of assembly, authorizing school commissioners to lease school land; at least this respondent had not, and the other two commissioners said they had not. In fact, the said commissioners did not know that any such law had been passed, until the said Caldwell came there and brought what he said was a caption of the act of assembly, and said a law had been passed giving them full power; that he had went to Nashville and procured the law to be passed, for the express purpose of getting the lease upon said school section; and after the many great advantages the children as well as the people of the township would derive by the commissioners signing said lease, the said Dugger and Denton signed it, but respondent refused to sign it, and not sign it until next day, when Caldwell came to the house of respondent and again enlarged upon the advantages the children and citizens of the township would derive from said lease; that it would yield a large sum of money per annum to the township, and it would cause a considerable town to spring up there, and afford a ready market for the products for that portion of the country, and at

length this respondent signed it. It was understood by this respondent that complainants were to go to work immediately, and raise ore and sell it, and account to the township annually for its portion, but the complainants have as yet done but very little work, as respondent is informed and believes. This respondent has never, as yet, according to his belief, seen but very little inclination in complainants to go to work and test said mines as yet, but respondent is informed and believes that their sole aim has been to sell it on speculation, and he is now well satisfied that it was the sole view and purpose of complainants, in the first instance, to obtain said lease, and thereby encumbered said land, so that it would sell for but little, and thereby they could buy in the legal title and forfeit the lease, and then sell the land on speculation, though respondent did not think so at the time he signed said lease, and he only signed it because he was advised by Caldwell that he was authorized by law to do so, and that in so doing, respondents would greatly benefit the children and people of the township; and not only complainant Caldwell so advised respondent, but the said Hancock gave the same advice, who was a citizen of the township. Since the time respondent signed said lease, he has seen an instrument of writing between the complainants and the said Hancock, reciting in substance, that whereas the said Hancock had satisfied them in procuring said lease, in consideration therefor, the said complainants conveyed to him one-sixth interest in said lease. Respondent believes it to be true, that complainants filed their original bill and obtained their injunction, as charged, and also the amended bill. It is also true that the said school section was sold by the clerk of the circuit court of Polk county, subject to whatever legal interest the said complainants acquired by virtue of said lease and of said sale. The land sold for $1,770, as respondent now recollects; but in that respondent may be mistaken; and at said sale the respondents, Tipton, Callaway, Johnston, Lyon and Waterhouse, became the purchasers, and at said sale the complainants run said lands up on the said Tipton and others to a sum much larger than the valuation of the commissioners, and each party at said sale appeared to disregard the said lease; and the said Caldwell told respondent the next day after the sale, that he run the land up to what he thought it was worth, and no higher. In fact, the said Tipton and company said the lease was void, and of no effect. It is true that said section sold for much more than it was worth, unless it should contain copper ore in sufficient quantity and quality to make it valuable. If it should contain rich valuable copper mines, then it did not sell for anything like its value. How that fact may turn out respondent does not know, but respondent believes that complainants have full time to have made some satisfactory test of the richness of said mines, if they had gone to work, as Caldwell

promised to do when respondent signed said lease, and as the said Caldwell said said lease compelled him to do.

Respondent is informed that the commissioners of said township opened or advertised an election, as prescribed by law, to sell said school section; but, as was common, a majority of the qualified voters did not attend there. The county court of Polk, under the act of assembly, appointed William S. Conner, who was a commissioner, to take the sense of the qualified voters of the township for and against the sale of said school land, and that he took the same and returned it to the circuit court of Polk county, Tennessee, and said court being satisfied that a majority of the qualified voters of the township were in favor of the sale, ordered the said section sold, and it was sold as above stated. If there was any fraud in this whole transaction, this respondent has no knowledge of it.

This respondent has no means of inspecting Exhibit "B," appended to complainants' amended bill, because the clerk has omitted to append a copy to the copy of the bill served upon this respondent.

Respondent does not know whether Nathan Mathews and Jefferson Allen voted for or against the sale of said land, nor does he know whether or not their names *was* returned for or against the sale. Respondent does not know whether or not the said Nash, Cartrell, Turmon and Miller were qualified voters in said district. This respondent believes the said Nash is an Irishman, who has lived there upwards of three years. It is reported that said Miller was once in the penitentiary in the State of Georgia. Respondent does not know whether or not the other persons named in complainants' bill as being qualified voters, did or did not vote for the sale of said school land, nor does respondent know whether or not a majority of the qualified voters in said township voted for or against the sale of said section; that all took place before respondents, Dugger and Denton, were elected, and respondent never heard any complaint about it until since the complainants filed their original bill, and the return of the said Conner is not appended to the copy of the amended bill, and respondent has not now the means of examining the question or giving any information about it. And respondent now having fully answered all that he is advised it is material for him to respond unto, submits the validity of said lease and said sale to the decision of this honorable court, and prays that said bills, as to this respondent, be dismissed, and be hence discharged, with his reasonable costs decreed to him, &c.

J. H. LEMING.

GANT & ROWLES,
Sol's for Respondents.

STATE OF TENNESSEE,
Bradley County.

This day personally appeared before me, one of the acting justices of the peace in and for said county, James H. Leming, the respondent in the foregoing answer, and made oath that the facts as therein stated, as of his own knowledge, are true, and those stated as on the information of others he believes to be true.

JAMES H. LEMING.

Sworn to and subscribed before me, this 22d day of July, 1851.

JACOB BROWN,
J. P. for B. C.

The separate answer of James Smith, to the original and amended bill filed against him and others in the chancery court, at Athens, McMinn county, Tennessee, by John Caldwell and James V. Symons.

This respondent, saving and reserving to himself all the benefit of exceptions to complainants' said bill, for answer thereto, or as much thereof as he is advised it is material for him to respond to, answers and says, he supposes it to be true that complainants filed their original and injunction bill against this respondent and others at the time specified in their amended bill; and that he is informed and believes that the said Denton, Dugger, and Leming were common school commissioners for the township specified in said bill, and that he was then acting as clerk of the circuit court of Polk county, Tennessee; that he is informed and believes that there was a law passed by the general assembly of the State of Tennessee, on the 4th day of February, 1850, authorizing the commissioners of any school district in Polk county to lease any unsold school lands in their respective districts in said county to any person or persons for mining purposes; that shortly after the passage of said act of assembly, William Conner, a commissioner appointed by the county court of Polk county to take the *censes* of the qualified voters of said township, with regard to the sale of the school land situated therein, (as appears from his return,) made a return of the vote of said township, showing a majority in favor of the sale of said school lands, to the circuit court of Polk county, Tennessee, at its February term, 1850, shortly after the passage of said act; that from said return, which was sworn to in open court, on the 13th February, 1850, and his examination by the court, the court decreed the sale of the school lands aforesaid, and that this respondent should proceed to sell the same as the law directs; this respondent also believes it to be true, that said Denton, Dugger and Leming, as commissioners for the township aforesaid, under the provisions of the act of assembly passed 4th Feb., 1850, as aforesaid, leased the said section of school land to

said Caldwell and Symons for mining purposes, for the term of 99 years, on the 21st day of May, 1850, and believes it to be true that said lease was made in good faith by each of the parties; that this respondent proceeded to advertise said school land for sale as the law directs; that said section had been valued by commissioners appointed for that purpose, to the sum of $420, as respondent believes; that in said advertisement, the mineral wealth of said section of land was held out as an inducement for purchasers to bid for said land in the outset, but that respondent did not know at the time of writing the same that said lease had ever been given, but that shortly after advertising said land for sale, he was informed of the fact by one or both of complainants, and at their request forwarded a short article to the editor of the Post, which was annexed to the advertisement, informing all persons who read it that said lands had been leased to the said Caldwell and Symonds, for the term and purposes aforesaid, as respondent recollects, which article was continued through the subsequent advertisement; that said inducement was not held out for any fraudulent intention, but because respondent was satisfied that there was valuable mineral property upon the lands, and he desired to make the property bring its worth at the sale; that said advertisement had no reference, nor made any reservation of the rights and privileges secured to and vested in complainants, from the fact, as before mentioned, that respondent knew nothing of said lease at all at the time of advertising; the respondent also supposes that the valuing commissioner made no estimate of the mineral property of said lands whatever; it is also true that in the original bill *and* injunction was prayed for restraining and enjoining the respondent from executing said decree of said court, so far as it interfered with the rights of complainants; that an enjunction was issued from the chancery court, at Athens term, enjoining and restraining this respondent from selling or disposing of, in any way, any interest that may have accrued to the complainants by virtue of said lease; that said injunction was presented to this respondent by complainant Caldwell, and this respondent acknowledged service of the same. This respondent further states, that he believes if said injunction had been served upon respondent without any explanation, that he would not have proceeded to sell said lands, but that said Caldwell informed him that it was not intended by the injunction to prohibit the sale of the land entirely, but that the interest of said complainants were only to be reserved at said sale, and held out the idea that he was willing for said lands to sell if said interest was reserved, and stated that he was willing to give the worth of said lands for them, or at least the amount of the valuation, and it was only when convinced by the declaration of said Caldwell that the intention of the injunction was not to prohibit the sale of the lands entirely; that he proceeded to sell

the same without any intention of practising a fraud upon the right of complainants, or violating the terms of said injunction. And on the 26th day of July, 1850, the day specified in the advertisement for the sale of said lands, this respondent proceeded to sell the same upon the premises, upon the following conditions: This respondent read publicly, before selling the same, said act of assembly, passed 4th Feb'y, 1850, in relation to leasing school lands for mining purposes; he also read the covenant of lease from the commissioners aforesaid to complainants, and also the injunction issued from the chancery court, as aforesaid; and after making a public reserve in the specific words of the injunction aforesaid, of any interest that may have accrued to the complainants under said lease, read as aforesaid, he proceeded to sell the remaining interest in said lands; and so careful was this respondent not to predjudice the rights of complainants, that he only offered the remaining interest, if any, for sale, not alleging that there was any other interest; that it is true that upon offering said remaining interest for sale, that Euclid Waterhouse and others became the purchasers at the price of $1,770. As to the allegations in complainants' bill, that no legal steps had been taken to ascertain the sense of said township, this respondent is unadvised, and does not know what the facts are. And now having fully answered complainants' bill, or so much thereof as he is advised it is necessary and proper for him to respond to, this respondent prays to be dismissed, and hence discharged with his reasonable costs.

JAMES SMITH.

Sworn to in open court, 19th Aug't, 1851.

WM. LOWREY, *C. & M.*

Answer of Dugger and Denton, filed 29th August, 1851.

The joint answer of B. C. Dugger and Samuel Denton to the amended bill of John Caldwell and James V. Symons, in the chancery court at Athens.

These respondents, saving and reserving to themselves the benefit of all legal exceptions to said bill, for answer thereto say, the answer heretofore made to the original bill applies to the recapitulation, and is in all things reaffirmed. They answer, it is true that the clerk of the circuit court sold the premises in dispute, on the day and in the manner charged; it is true the land was valued at about four hundred dollars, and these respondents were informed by the commissioners appointed by the county court to value this land, that the *stimate* was made for the sale only, or for that portion of the property not covered by the lease; but the respondents believe it is true that the land sold for the amount charged, to a company supposed to be composed of the names charged in the bill; they are informed and believe that William Conner was appointed to take the sense of the voters of the town-

ship, as to the sale of the school land. How he discharged that trust, these respondents cannot say of their own knowledge; but they believe that the vote thus taken by Conner was the only one ever taken in the township. Whether or not the paper was presented to every voter, these respondents cannot say, of their own knowledge; but they are informed and believe B. A. Hyde, Jefferson Allen, Nathan Mathews, Reuben Gunter, George Mathis, Elijah Kirby, J. N. Kirby, Elisha Southerland, D. S. Dilbeck, Humphrey Kimsey, and W. M. Gass, did not vote in said election, although they were by law entitled to vote. These respondents cannot say of their own knowledge; they can state, however, that Patrick Nash has stated to them that he is an unnaturalized foreigner, and Sutton Miller admitted that he had been in the penitentiary, and has not been restored to privileges, and they believe these statements. These respondents are informed and believe, that Emanuel Turmon was not of age at the time said vote was taken; yet these several persons voted for the sale of the school land. These respondents cannot say of their own knowledge, but they believe J. J. Sims was not a legal voter; *that* admit that lease was made at the time charged and shown in the exhibits; that it was done with a full, fair understanding between the parties, with the view to benefit the children of the township. They believed it would be a beneficial arrangement, and remain fully convinced of that fact; yet, having now fully answered, so far as they are advised is *is* necessary for them to respond, they pray to be dismissed with their reasonable costs in this behalf expended.

MILTON P. JARNAGAN,
Sol. for Respondents.

STATE OF TENNESSEE,
Polk County.

Before me, Elias Davis, an acting justice of the peace for said county, appeared Samuel Denton, who, after being duly sworn, say that the matters and things stated in the foregoing answer upon their own knowledge are true, and those stated upon information they believe to be true.

SAMUEL DENTON. [SEAL.]

Sworn to and subscribed before me, this 25th day of August, 1851.

Test: ELIAS DAVIS,
Justice of the Peace.

This answer was filed 21st day of August, 1851.

The separate answer of John B. Tipton, Euclid Waterhouse, Samuel M. Johnston, Thomas H. Callaway, to the bills filed against them and Thomas C. Lyon, Benjamin C. Dugger, James

H. Leming, and Samuel Denton, in the chancery court, at Athens, Tennessee, by John Caldwell and James V. Symons.

These respondents, saving and reserving to themselves all benefit of exceptions to the said complainants' said original and amended bill, for answer thereto, or so much thereof as they are advised it is *not* material for them to respond to, answer and say, they believe it is true that on the 4th day of February, 1850, a law was enacted by the legislature of Tennessee, authorizing the commissioners of the unsold school lands in Polk county, Tennessee, to lease said lands for mining purposes. Respondents are further informed, and believe, complainant Caldwell went to Nashville, Tennessee, and procured said law to be passed, with a view to incumber the sale of the school section described in complainants' bill; it is also true, as respondents believe, that the section of land described in said bill was a school section in said county of Polk, and unsold at the passage of said law; but they are informed and believe, that the people of said township, or a majority of them, had given their assent to the commissioners legally appointed for that purpose to sell said school section of land before the passage of said law. They are informed and believe, that the vote for and against the sale of said school land was returned to the circuit court of said county of Polk, at the Feb'y term, 1850, of said court; and thereupon said court ordered and decreed that the clerk of said court shall sell said lands as directed by law; and that said order was revived by said court at the June term, 1850, and that the clerk of said circuit court, on the 26th day of July, 1856, did sell *sell* said school section, and at said sale respondents, Tipton, Waterhouse, Johnston, Callaway, and Lyons, became the purchaser thereof at the sum of $1,770, though the said Callaway and Lyon *was* not present at said sale.

Respondents further answering, say they are informed and believe that the complainants and said school commissioners did enter into the covenant of lease, a copy of which respondents supposes is annexed to complainants' original bill, on the 21st day of May, 1850; and it is also true, as respondents believe, that complainants filed their original bill in the chancery court at Athens, Tennessee, as charged in their bill, and that an injunction was issued enjoining the clerk of said court from selling said school land, only subject to such right as complainants had *required* by virtue of said lease; and at the sale of said lands, the clerk read said injunction and said covenant of lease, and then put up said lands for sale, and it was bid off by respondents, as above stated; the complainants bid against respondents, and run up said lands upon them, to said sum of $1,770. Respondents would not have given the amount of the valuation of said lands except for the supposed minerals that it contained; in fact said lands, aside from its

supposed value for minerals, are of but little value. Respondents run said lands up at said sale, not in contempt of said injunction, but because they believe there was more or less copper ore, and perhaps other minerals, in and upon said land, and because they believe that complainant had acquired no interest or incumbrance in or upon said lands whatever. They will here state to the honorable court their reasons for such belief: it will seem by an inspection of the records of the county and circuit court of Polk county, Tennessee, as they are informed and believe, that a commissioner had been appointed to take the sense or vote of the people of that township for and against the sale of said lands; that said commissioner had taken the same; and that a majority of the qualified voters therein had voted for the sale of said lands before said law passed authorizing said lease. Again, it will be seen by the court, that said circuit court, at its Feb'y term, 1850, had decreed said lands to be sold, and commissioners had valued said lands preparatory to a sale, and people and court had full and complete jurisdiction to sell said lands unreservedly and unconditionally, and not otherwise; and the common school commissioners, after the court had decreed the sale, had no power whatever to rent, lease, or encumber the lands in any form or shape. These respondents honestly believe that said lease was void and inoperative, and having no more binding effect than if made by strangers living out of Polk county. They *they* bid what they did for said lands honestly, believing that they would get a good title to said lands and all its minerals, with present right to enjoy it, otherwise they would not have made said purchase. They further believe said lease was procured by complainants with a full knowledge that the lands were decreed to be sold and fraudulently obtained by complainants to embarrass the sale, and to buy in the legal title and then forfeit the lease. Your honor will see, from an inspection of said records, which they ask leave to file hereafter as a part of this answer, the said lands were only valued at $420, and respondents gave said sum of $1,770 for said lands they bought then, with a view to their mineral wealth; when fairly tested they may turn out not to be worth one-fifth of the sum which respondents gave for them, or they may turn out to be worth much more; but to give complainants the mineral water and timber for ninety-nine years respondents paid a high price for nothing, and complainants procured their title from persons who had no power to give said lease, as these respondents honestly believe, and the township has accepted of said money, or its interest, and the respondents are held out of the use and enjoyment of said lands. Respondents are advised that the circuit court of Polk county by law only decree an absolute and unconditional sale of said lands, and the clerk could make no conditions or restrictions in the sale,

and in fact made no reservations, only subject to such interest as complainants acquired by said lease; and respondents, believing they had no interest, gave the sum above specified; and respondents are advised that complainants are entitled to no relief in this honorable court, and here pray the same relief as though their bills were formerly demurred to.

These respondents, further answering, say, that as to the charge in complainants' said bill that certain persons therein mentioned, who they charge that were not qualified voters in the election for the sale of the school land described in said bill, these respondents do not profess to know anything about; and as to the charge in said bill that William Conner, the commissioner appointed to take the sense and vote of said township for the sale of said school lands, did not see and take the votes of all the qualified voters of said township, these respondents know nothing about; but respondents are advised and believe that said commissioner did take the vote of all the qualified voters of said township, and a majority of said voters at said election were in favor of said sales, as appears from said report.

Now these respondents, having fully answered each allegation in complainants' said original bill and amended bill, pray that said original and amended bill may dismissed, and that said injunction may be dissolved, with reasonable costs decreed to them, &c.

SAMUEL M. JOHNSTON,
JOHN B. TIPTON,
EUCLID WATERHOUSE,
THOMAS H. CALLAWAY.

JOHN C. & J. H. GANT, and
GEORGE W. ROWLES,
Sol's for Respondent.

STATE OF TENNESSEE,
Bradley County.

This day personally appeared before me, Wm. Lowry, clerk and master of the chancery court at Athens, John B. Tipton and Samuel M. Johnston, two of the respondents in said cause, and made oath that the facts as stated in the foregoing answer as of their own knowledge are true, and those as stated as on the information of others they believe to be true.

JOHN B. TIPTON,
SAMUEL M. JOHNSTON.

Sworn and subscribed before me this 13th day of August, 1851.

WM. LOWRY,
C. and M.

STATE OF TENNESSEE,
McMinn County.

This day personally appeared before me, Wm. Lowry, clerk and master of the chancery court at Athens, in said county, Euclid Waterhouse, and made oath that the facts stated in the foregoing answer as of his own knowledge are true, and those not stated on his own knowledge, but upon the information of others, he believes to be true.

EUCLID WATERHOUSE.

Sworn to and subscribed before me, this 21st day of August, 1851.

WM. LOWRY, *C. and M.*

The following cross-bill was filed, Sept. 7th, 1851:

To the Honorable Thomas L. Williams, chancellor for the eastern division of the State of Tennessee, and presiding in the chancery court at Athens, Tennessee:

Thomas C. Lyon, a citizen of the county of Knox, and State of Tennessee, John B. Tipton and Samuel M. Johnston, citizens of the county of Monroe and State of Tennessee, Thomas H. Callaway, a citizen of the county of Bradley and State aforesaid, and Euclid Waterhouse, a citizen of the county of Murry and State of Georgia, humbly complain of John Caldwell, a citizen of the county of Sevier, in the State of Tennessee, James V. Symons, a citizen of the county of McMinn and State aforesaid, and Samuel Congdon, formerly a resident of the county of McMinn, and State aforesaid, but now supposed to be a citizen of the county of Polk, in the State aforesaid, and show to your honor, that about the 29th of June, 1850, the said respondents, Caldwell and Symons, filed their original injunction bill in the chancery court at Athens, Tennessee, against Benjamin C. Dugger, James H. Leming, and Samuel Denton, as common school commissioners of the 8th district of Polk county, Tennessee, and against James Smith, clerk of the circuit court of said county of Polk; which bill, in substance, charges that an act of the general assembly of the State of Tennessee, passed at Nashville, on the 4th day of February, 1850, the common school commissioners in the said county of Polk, were authorized to lease for mining purposes any school lands unsold in said county; that the sixteenth section of fractional township four south, and range five west, of the basis line, in the Ocoee district, was a section of school land unsold in said county of Polk; that on the 21st day of May, 1850, Benjamin C. Dugger, James H. Leming and Samuel Denton, common school commissioners for said 8th civil district in said county, entered into a covenant of lease of said school section, with said Caldwell and Symons, for mining purposes, for the term

of ninety-nine years, and exhibit a copy of said covenant of lease to said bill, marked A, and which your orators pray to be made a part of this bill;. that such proceedings had been had in relation to said school section since the passage of said act of assembly; that, by an order of the circuit court of said county of Polk, at the February term, 1850, and revived at the June term, 1850, the said school land was decreed to be sold, and was then advertised to be sold by said clerk on the 25th of July, 1850, without any reservation of the mining privileges secured to the said Caldwell and Symons in said lease; that they, in pursuance of said lease, had entered upon said lands, *of* from actual experiment and observations they were fully satisfied that the same contained large veins of copper ore.

Said bill averred that they did not wish to object to said sale of said school lands, subject to the right and privileges granted them, under and by virtue of said lease. Said bill in substance prays that said decree of said circuit court be enjoined, so far as it conflicted or interfered with their rights; and that said clerk of said circuit court be enjoined from executing said decree, so far as it conflicted with the rights of said Caldwell and Symons.

Your orators further state to your honor, as they are informed and believe, by the order and fiats of the Honorable Charles F. Keith, an injunction was issued by the clerk and master of the chancery court at Athens, Tennessee, directed to the sheriff of said county of Polk, but service acknowledged by said clerk on the sixteenth day of July, 1850, in which said clerk was enjoined in the following words:

You are hereby enjoined and restrained from selling or disposing of, in any way, the interest that may have accrued to the said John Caldwell and James V. Symons, by virtue of a lease to them of the said Dugger, Denton and Leming, as school commissioners, of fractional township 4 south, and range five east, of the basis line, in the Ocoee district, being the sixteenth section in said fractional township.

Your orators refer your honor to said injunction, now on file in said cause.

Your orators further state to your honor, that prior to the 2d Monday of February, in 1850, the commissioner appointed by the county court of said county of Polk had taken the sense of the qualified voters of said district or township, for and against the sale of said school lands, as prescribed *the* the acts of the general assembly of the State of Tennessee. Said commissioner made the report to the circuit court of said county, commencing on the 2d Monday of February, 1850; and said commissioner being sworn and examined, and said court being satisfied that the sense of the qualified voters in said township had been fairly taken, and that a majority were in favor of the sale of said school land, the said court, at said

February term, 1850, ordered and decreed that said school section be sold by said clerk, as directed by law.

At the April session of the *county* of said county of Polk, commissioners were appointed to value said school section, as your orators are informed and believe; and on the 3d day of May, 1850, said commissioners valued said school section to $420.

At the June term, 1850, of said circuit court of Polk, commencing on the 2d Monday of June, 1850, the order and decree to sell said school section was revived, and the said clerk advertised said lands as directed by law, as your orators are informed and believe; and in said advertisement said lands were represented as containing copper ore, to induce bidders, and cause said lands to sell for the highest price, as your orators suppose. And in pursuance of said decree and advertisement, the said clerk put up said lands for sale to the highest bidder, on the terms prescribed by the act of assembly; at the same time the said clerk read said covenant of lease and said injunction, and then offered said land for sale, and your orators became the purchasers of the same at the sum of $1,770; the said Caldwell bid against them, and run up said lands to the said sum of $1,770. Your orators, Lyon and Callaway, were not present at said sale, but are informed and believe the facts are as above stated.

Your orators for said purchase paid the amount of money required to be paid down, and gave their bonds in the Bank of Tennessee, as required by act of assembly, for the residue of said purchase money.

Your orators bid for and purchased said lands with a view to their timber thereon, and their supposed mineral wealth and copper ore; the land itself, independent of its supposed contents of mineral, is of but little value, and but for the minerals, your orators would not have given the valuation of $420. Your orators run said lands up to said sum of $1,770, because they honestly believed the said lease to Caldwell and Symons void and fraudulently obtained. They would not have made said purchase if they had supposed for a moment that said Caldwell and Symons, their assigns or heirs or successors, could hold the said lands, by the terms of that said lease, for ninety-nine years. And your orators know that this is a question of law, to be decided by your honor; but they beg leave here to suggest to your honor some of the reasons which induce them to believe the said lease wholly void.

It will be seen by reference to the act of assembly, and the transcript of records of the county and circuit courts of said county of Polk, which your orators beg leave hereinafter to file, that said law, under which Caldwell and Symons purport to hold said lease, passed the 4th day of Feb'y, 1850, after the people of the township had taken jurisdiction to sell said lands, and after the sense of the qualified voters had been taken, as your orators believe, at

the Feb'y , 1850, of the circuit court of said county of Polk. The court decreed said lands to be sold, and no lease had been made, not until the 21st of May, 1850, more than three months after the people had voted for the sale, and the court had decreed the sale, and after the commissioners had valued lands, preparatory to a sale, and said Caldwell and Symons had procured said lease, with a full knowledge that all those *enitorry* had been taken to bring said lands to sale. The act of assembly authorizing the sale of school lands points out the mode and manner of sales, and when sold, the State makes the title, and it nowhere recognises anything but an absolute and unconditional sale; hence your orators honestly believe, after the people had voted for the sale of the school lands, and particularly after the court had decreed the sale of the land, the common school commissioners had no power whatever, more than a stranger, to lease in anywise, encumber or prejudice the sale or purchase of the lands, under that sale If they have any such power, these school commissioners can defeat the will of the people, and the jurisdiction of the court, who may order the sale, and cause sales unknown to the act of assembly. Your orators honestly believing said lease void, they bid for and purchased said lands, as though said lease had never been made, and they supposed the scholastic population in said township have been enjoying the intended benefit of said sale, by the use of your orators' money. Again, your orators are informed and believe, that the said Caldwell went to Nashville, and procured said 5th *of* section to the act of 4th of February, 1850, to be passed, and came to Polk county Tennessee, and gave, or agreed to give, a citizen of that county an interest of one sixth, or a certain sum of money, to use his influence with said commissioners to get them to sign said lease. Your orators further state to your honor, that the said Caldwell and Symons were not opposed to said clerk selling said lands, but in fact desired the sale, as your orators are informed and believe; and they believe the sole object in procuring said lease was to embarrass the sale, and keep other bidders off, and buy in the legal title at the valuation, then abandon or forfeit the said pretended lease. Your orators state, that they believe said land contained copper ore, and they purchased it with that view. It is true that when a fair test is made, it may turn out that the lands is not worth what your orators gave for them, or they may be worth more. After the sale of said lands as aforesaid, the said clerk executed to your orators a certificate of purchase, which certificate, by the 10th section of the act passed January 23d, 1846, is sufficient evidence of title to enable your orators to maintain an action of ejectment, or other suitable action to recover the possession of said lands, where adversely held, and a report of said sale was returned to said circuit court, at the October term, 1850, by said clerk, and spread upon the records of said court, but not confirmed by said court, by reasons of said injunction. But your orators

are advised that can make but little difference, because their title does not depend upon any action of the court after the decree of sale. Your orators further state to your honor, that on the 18th day of Feb'y, 1851, the said Caldwell and Symons obtained leave, and filed an amended bill in said chancery court, at Athens, against the said school commissioners, and against your orators, which in substances charges the same as said original bill; and further, that certain persons who voted for the sale of said school land were not qualified voters, and that certain others were absent from the district, &c.; and which amended bill in substance prays, that said circuit court be enjoined from rendering any decree upon the report of said clerk of the sale of said lands; that said interlocutory orders and sale be set aside, and that they be permitted to enjoy their said lease, &c. Your orators have answered said bills, and they now here charge and state to your honor, that the said Congdon, as they are informed and believe, has either taken an interest with the said Caldwell and Symons, under said pretended lease, or has bought out the said Symons' interest in the same, with a full knowledge of your orators' said purchase; and the said Caldwell, Symons, and Congdon, as your orators have been informed and believe, are now at work upon said lands, and taking copper ore and using timber upon said lands, as they choose, to the detriment and injury of your orators. Your orators believe the said lands, and the copper ore in and upon the same, rightfully belong to them under their said purchase, but the said respondents disregard the said purchase, and are using the said lands, copper ore, timber and water thereon, as though it belonged to them; at the same time have attempted, by an injunction, to restrain the circuit court of said county of Polk from perfecting your orators' said sale, and are trying to set aside the orders and decrees of said court, under which your orators made said purchase; at the same time your orators' $1,770 in money and bonds have passed into the Bank of Tennessee, at Athens, for the benefit of the scholastic population of said township, and your orators believe the said respondents will continue to waste the timber upon said lands, and take from said lands, to their own use, copper ore, and perhaps other minerals, unless restrained from so doing by an injunction.

The premises considered, your orators pray that the said Caldwell, Symons and Congdon be made defendants to this bill; that they each one answer the same upon oath, in as full and complete a manner as though each allegation was here again stated, and they each one thereto particularly interrogated; that this bill be taken as a cross-bill in said cause above described, and be tried, at the same time; that an injunction be issued by the clerk and master of the chancery court at Athens, Tennessee, to enjoin the said respondents, or any or either of them, from working or mining on

said lands, or causing the same to be done, and from taking out any more copper ore or other minerals out of said lands, and from cutting and destroying any more timber upon said lands, until the final hearing of this cause; that upon the final hearing, your orators pray that said lease be declared void by a decree of this court, and that original and amended be dismissed, and said injunction first and secondly above described be dissolved; but if your orators are mistaken in the relief above prayed, they pray all such other and further relief as is suited to their case, and that copies of this bill and subpœnas be issued by the clerk and master of the chancery court at Athens, Tennessee, returnable to the proper term, &c.

THOMAS C. LYON,
JOHN B. TIPTON,
SAMUEL M. JOHNSTON,
THOMAS H. CALLAWAY,
EUCLID WATERHOUSE.

GEORGE W. ROWLES,
JOHN C. & J. H. GANT,
Sol's for Complainants.

STATE OF TENNESSEE,
Bradley County.

This day personally appeared before me, Thomas L. Williams, chancellor for the eastern division of the State of Tennessee, Thomas H. Callaway, one of the complainants in the foregoing bill, and made oath that the facts as therein stated as of his own knowledge are true, and those stated as upon the information of others he believes to be true.

THOMAS H. CALLAWAY.

Sworn to and subscribed before me, this 25th day of August, 1851.

THOMAS L. WILLIAMS,
Chancellor.

To the Clerk and Master at Athens:

You are required hereby to issue a notice to the defendants, to appear before you and enter into bond and security, in the penal sum of five thousand dollars, to be void on conditions they will fully pay and satisfy all such damages as the plaintiffs may sustain by the use and destruction of timber or by taking mineral from the copper ore banks in dispute, and in default of the execution of the bond aforesaid, you will therefore issue an injunction according to the prayer of the bill. The notice to the defendants may be served by the sheriff of the county in which the defendants reside, or by a private person, who may prove the service of notice before you, the clerk and master. The injunction will issue in ten days

after service of notice, unless the bond be executed as above required.

THOMAS L. WILLIAMS,
Chancellor.

August 26, 1851.

Orders and Decrees.

Thursday, 22d August, 1850. The following order was made, to wit:

JOHN CALDWELL, JAMES V. SYMONS,
vs.
B. C. DUGGER, SAMUEL DENTON, JAMES LEMING and JAMES SMITH.

This cause came on to be heard, on the demurrer of James Leming, one of defend's, to compl'ts' bill, and after argument of counsel, and deliberation of the chancellor, it is considered that said demurrer be overruled, and that the defendants have until the Nov. rules to answer, so as not to delay, and that they may insist upon the matters of demurrer in their answer.

Wednesday, 19th of Feb'y, 1851. The following order was made, to wit:

SYMONS & CALDWELL
vs.
DUGGER, DENTON and Others.

In this cause leave is given the complainants to file an amended bill, impeaching the decree of the circuit of Polk county, Tennessee, ordering the sale of the section of school land upon which said complainants claim to hold a lease for 99 years, and the said complainants having prayed for an injunction, restraining the purchasers under said decree from in any manner interfering with the rights of compl'ts' claims by them under said lease, until the further order of this court, and also enjoining the confirmation of said sale by the circuit court of said county of Polk, it is ordered by the court that said injunction issue upon complainants giving bond and security in the sum of 3,500 dollars, to abide by and perform the judgment of the court on the final hearing of the cause.

Thursday, the 21st of August, 1851. The following order was made in this cause, to wit:

JOHN CALDWELL and JAMES V. SYMONS
vs.
DUGGER, DENTON and Others.

In this cause, leave is granted the purchasers of the land to file a cross-bill.

Wednesday, 18th August, 1852. The following decree was pronounced in these causes, to wit:

CALDWELL & SYMONS vs. B. C. DUGGER et al.; And THOMAS C. LYON and Others vs. CALDWELL, SYMONS et al.	Or. and Amended Bill, and Cross-Bill.

Complainants in this original bill appeared by their counsel, James B. Cook, esq., and dismissed their original and amended bills; it is therefore ordered that the complainants in said original and amended bill pay all the costs of said causes, for which execution may issue; and the complainants in said cross-bill appeared by their solicitor, and dismissed said cross-bill; it is therefore ordered by the court that the defendants recover of the complainants in said cross-bill all the costs in that behalf expended, for which execution may issue.

The following is a copy of the entries upon the rule docket, to wit:

Injunction issued 29 June, 1850, to Polk county, 4 copies 22 50, and subpœna issued 10th July; acknowledgment of service of injunction by Smith, clerk, 16th July, postage 5 c.; subp's executed on Smith, and Leming, and Dugger, and Denton not found; gave a copy of bill to Leming. D. Bradford, sh'ff.

Answer of Smith filed 19th August.

Demurrer of Leming filed 19th August.

Answer of Dugger and Denton filed 22d January. At February term, 1851, on motion, leave is granted compl'ts to file amended bill. Amended bill filed 18th Feb'y, 1851.

Answer of Leming, Tipton, Johnston and Euclid Waterhouse, filed. Subpœna executed Dugger, Denton, Leming and Smith.

Ans. of Smith filed to amended bill, 19 August, 1851.

Answer of Dugger and Denton filed 29th August, '51.

August term, 1851. On motion, time is given T. C. Lyon, one of the def'ts, until Nov. rules to answer.

Notice issued on cross-bill to def'ts to come in and give security. Notice returned executed on Symons and Congdon; Caldwell not found. *Als* issued for Caldwell 29th Sept., to Polk; returned executed. M. H. Hancock, D. Sh'ff.

All further proceeding stayed in this cause by consent of parties until further ordered.

August term, 1852. Bill and amended bill dismissed at compl'ts' costs, and cross-bill dismissed at compl'ts in cross-bill costs.

THE STATE OF TENNESSEE.

I, William Lowry, clerk and master of the chancery court at Athens, McMinn county, Tennessee, do certify that the foregoing is a true and perfect transcript of the record in said causes as the same appears from the original files now in my office, together with all the rules, orders and decrees had in said causes during the progress of the same.

Given under my hand at office, in Athens, the 21st day of November, 1856.

WM. LOWRY, *C. & M.*
By WILLIE LOWRY, *D. C. & M.*

Transcript of Record from the Chancery Court at Athens, Tennessee.

CALDWELL & SYMONS vs. DUGGER, DENTON et al.; And THOMAS H. CALLAWAY et al. vs. CALDWELL, SYMONS et al. } Bill and Amended Bill. Cross-Bill.

Complainants, by their solicit's, except to the reading of the within transcript of record as evidence in this cause, for the reasons that same is illegal and incompetent evidence, not being, as purported to be, a proceeding between the same parties, or about the same subject-matter, and because the compl'ts have never had any notice of the filing the same, and there being no entry of record or upon the rule docket showing the same had ever been filed as evidence in the cause.

BROWN & COOK, *Sol.*

April 4, 1858.

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Filed 22 January, 1857, by resp't's counsel.

J. H. ALEXANDER, *C. & M.*
By JAS. SMITH, *D. C. & M.*

The above was handed into office on the 22 day of January, 1857, enclosed in an envelope, with directions to file it in the case of the Common School Commissioners vs. John Caldwell and others, and was marked filed on the envelope at that time, and has been in office ever since, but no notice of the filing was taken on the rule docket. Aug. 4, 1858.

J. H. ALEXANDER, *C. & M.*

STATE OF TENNESSEE,
Polk County.

Be it remembered, that on the twelfth day of June, A. D. 1857, I, Benjamin Mormon, acting justice of the peace for the county aforesaid, by virtue of the power in me vested by the commission hereto prefixed, to examine all witnesses, as well on behalf of John Goodman and Yancey S. Bledsoe, common school commissioners of the 8th civil district of Polk county, Tennessee, complainants, of Thomas H. Callaway, Euclid Waterhouse, Samuel Congdon, The Tennessee Mining Company, John Caldwell, James V. Symons, and other respondents, or either of them, in a matter controversy pending in the chancery court, held at Benton, in Polk county, Tennessee, did cause to come before me at the counting-room of Messrs. Boyd & Biggs' store, near the Hiwassee copper mines, Polk county, Tennessee, John Rodgers, aged about forty-six years, as a witness on behalf of complainants in said cause; and *and* the said Rodgers, being duly sworn on the Holy Evangelists of Almighty God, deposeth and saith as follows:

Question 1st by complainants' counsel. Please to state if you are acquainted with the parties to this suit.

Answer. I am acquainted with some of them.

Quest. 2d by same. Please to state how long you have been a resident of the 8th civil district of Polk county, Tennessee.

Answer. Ever since the Indians were removed, except two years; was here at the time the county was organized.

Quest. 3d by same. State where you resided during the year 1849, 1850, or 1857.

Ans. I was living in Ducktown, but not at the sale.

Quest. 4th by same. Are you acquainted with the lands in dispute, to wit, the sixteenth section of fractional township four south, and range five east, of the basis line, which is the school section of the 8th civil district of Tennessee?

Answer. I am tolerably acquainted with it.

Quest. 5th by same. You will please to state anything you may know about the vote or votes which were taken either by William S. Conner, commissioner, or otherwise, for the purpose of selling said lands.

Answer. I recollect about their taking the vote. Mr. Conner went round to the different families, as well as I recollect, and took their votes.

Quest. 6th by same. If you know of any election being held near the Old Forge, in said district, in regard to said sale before the taking of the vote, and before the sale, you will please state it, and the result of that election.

Answer. I think there was one, and, if I mistake not, I was there, but do not recollect the result.

Question 7th. Did you vote in that election; and if so, how did you vote, for or against the sale of said school lands?

Answer. I think I voted, but I do not recollect now how I did vote.

Question 8th by same. Please to state if William S. Conner, commissioner, presented to you any paper for you to sign in regard to the sale of the said school lands; and if so, how did you then vote, for or against the sale of said school land?

Answer. I think he did present one, and, as well as I recollect, I voted against the sale.

Quest. 9th. Did you know of any votes being given, either for or against the sale of said land, *there* were illegal? If so, please state who they were.

Answer. I know none of my own knowledge.

Quest. 10th. If you know of any undue influence being used to get the voters of said district to vote for said sale of school land, either by promises of money, property, or favor of any kind, either by persons residing in said district, or out of it, you will please state all you may know about .

Answer. I do not know of any of my own knowledge.

Question 11th. If you know of offers of pay or favor to any of the voters to get their vote for said sale you will please state it.

Answer. I know of none to my own knowledge.

Question 12th. At the time the vote was taken by the commissioner, William S. Conner, for or against the sale of said school land, was there any other John Rodgers in said district entitled to a vote but yourself?

Answer. I do not think there was any other.

Question 13th. If you were acquainted with the circumstances of the taking of the lease upon said school land by John Caldwell and James V. Symons, you will please state if you know of any undue influences being used to get the school commissioners to

affect said lease, either by Caldwell and Symons, or others, for them.

Answer. None to my own knowledge.

Question 14th. Were you acquainted with Reuben Gunter at the time said votes *was* taken for or against said sale; and if so, was he a citizen of said 8th civil district, entitled to vote in said election?

Answer. I was acquainted with him; and if he had lived in the district long enough, was entitled to vote in that election.

Cross-examination.

1. When Wm. S. Conner presented you the paper for signature of your vote for or against the sale of the school land, do you recollect whether you signed your own name, or Conner, or some one else, for you?

Ans. I do not recollect precisely.

2d question. Give your best recollection, whether you affixed your own signature to the paper, or Conner, or some one else, for you.

Answer. I think it was either I or Conner, one, but I do not recollect which one.

Quest. 3. Are you to pay any of the costs of this suit, or have you come under any promise or agreement so to do, should the suit fail? Do you now live in the township where the land in dispute is located; if so, have you children of age sufficient to be entitled to the benefits of the school fund arising from the section of land in dispute? Do you expect to be a gainer in the event of the suit being gained, or a loser should it be lost?

Answer. Nothing *atal.* I live in the township, and *and* my children are all under the age of twenty-one. I do not expect to be gainer unless the school funds will profit my children, and if the suit is lost I do not expect to be loser myself; there is no loss to me individually, unless it should be a loss to my children.

And further this deponent saith not.

JOHN RODGERS.

Also personally appeared John Dunn, aged about forty-nine years, and James H. Leming, about thirty-five years of age, who being duly sworn on the Holy Evangelists of Almighty God, the said John Dunn deposeth as follows:

Quest. 1st by complainants' solicitor. Are you acquainted with the parties to this suit; and how long have you resided in this the 8th civil district of Polk county, Tennessee?

Answer. I have some acquaintance with them.

Question 2d. Were you a school commissioner in and for said district in the year 1849; and state if there *was* any propositions to lease the school lands in said district by any persons, and if any

propositions were made to *to* you for that purpose, what were those propositions, and by whom were they made?

Answer. I was; there were propositions made by John Caldwell; he came to me and wanted to lease the school property; I told him that I had no authority to give him a mining lease; he then asked me if he should petition to the State legislature, and get from it the privilege of leasing, if I would then be willing to give him a lease, and I told him I was willing.

Quest 3d. Upon what terms did John Caldwell offer to take said lease?

Answer. He said he was willing to give the seventh part of the *neat* proceeds of the school property to the township, or to the minor heirs of said township.

Question 4th. In consideration of said proposition, of which you have spoken in your answer to question 3d, did you sign a petition to the legislature, asking them to authorize the school commissioners to lease said school land?

Answer. I did.

Quest. 5th. What time in the year 1849 was this proposition made; and at what time did *you* term of office expire?

Answer. I do not recollect what time; my time as school commissioner expired that year, and new ones elected in our place.

Quest. 6th. Do you recollect of an election being held near the Old Forge in said district to determine whether or not the school lands should be sold, some time in the year 1850; and if so, what was the result of said election?

Answer. I recollect that there was an election being held there, but do not recollect the result; my impression is, though, that the people determined not to sell the school land.

Quest. 7th. If you recollect anything of William S. Conner being appointed a commissioner to take the vote of the township you will please state it, and also state if you know of any legal voters in the district at the time said vote was taken whose names were not taken by said William S. Conner, and state who they were.

Answer. That Conner was appointed commissioner; that Finias Dunn did not vote in the election; I believe that he was old enough, and had resided in the district long enough.

Question 8th. Please state if you know of any influences being used by any persons to induce the voters in the district to vote for said sale, either by offers of money, property, or other valuable thing, or by offers of favor of any kind, or of any other kind of influences being brought to bear to get votes for said sale?

Answer. I know nothing about that.

Question 9th. You will please to state whether or not any testing had been done on this said school land, and any discoveries made by John Caldwell on the 21st of May, 1850, the time the lease was executed.

Answer. I do not recollect there were any tests made.

Cross-examination.

Quest. 1st. At the holding of the election at the Old Forge, of which you have spoken, was there a scroll kept in writing of those in favor of and against selling the school land?

Answer. I think they did keep a record of the proceedings of the election.

Quest. 2d. At the time of holding said election do you know the number of qualified voters there being entitled to vote in said election?

Answer. I do not know.

Quest. 3d. Was Conner appointed by the county court to take the vote of the township after said election; and was not Conner's reappointment because a majority of all the qualified voters had failed to vote for, and a majority of all the qualified voters had failed to vote against the sale?

Answer. I think he was.

Question. Was not Conner so appointed to take the votes of the township, because in the election the majority of all the qualified voters had failed to vote against, and a majority had failed to vote for the sale of the land?

Answer. I do not know whether there was a majority of all the qualified voters in the township, on that day, voted for or against the sale of the school land.

Question. Please give the year and date of your son Phineas being born.

Answer. I cannot do that; I never kept a record of his age.

Re-examination by Compl'ts' Sol.

1st. Can you tell the age of your son Finneus now; and if so, what is his age at present?

Answer. I cannot tell; I never kept any record of his age.

And further this deponent saith not.

his
JOHN ⋈ DUNN.
mark.

Next came Willson Abercrombie, aged about forty-four years, who, being duly sworn according to law, on the Holy Evangelists of Almighty God, deposeth as follows:

Question 1st by complainants' sol. Are you acquainted with the parties to this suit?

Answer. I am acquainted with the parties.

Question 2d. How long have been a citizen of the 8th civil district of Polk county, Tennessee? And state if you are acquainted with the lands in dispute.

Answer. I came to Ducktown in the year of eighteen hundred and forty-two, and am acquainted with the land in dispute, and I have lived here ever since I first came to this place.

Question 3. If you know anything of the means used by John Caldwell, or by others, for him to get a lease upon the school land in this district, you will please state all you may know about it.

Answer. I do not know that I do recollect anything.

Question 4th by same. Do you recollect of any election ever being held near the Old Forge, in this district, in regard to the sale of said school land? If so, please state the result of that election, and whether or not it *accrued* before the sale of said land.

Answer. I heard of an election, but do not believe I was there, and I have forgotten the result.

Question. Do you recollect how you voted when William S. Conner, commissioner, came round to take the vote of said district? Did you vote for or against the sale of said land?

Answer. I disremember how I voted, if at all, when Mr. Conner came round to take the vote of the people, whether for or against the sale of school land.

Question 5th. You will please state, if you know of any undue influences being brought to bear upon the voters in said township to obtain votes for said sale, either by promises of money, property, or favor of any kind, by any person.

Answer. I do not recollect of any.

Question 6th. Have you acted as school commissioner in this township since the year 1850? You will please to state where and how long?

Answer. I served two years as school commissioner in this township.

Question 7. Did you ever as school commissioner demand a settlement with Samuel Congdon, who had charge of the works on the school land, for the amount due the school district; and if so, what was his answer to you?

Answer. Maj. Congdon agreed to settle the school funds with the commissioner.

Question 8th. Do you recollect anything of a petition ever having been got up by the people of the township, about the year 1850, expressing their disapproval of the way in which their lands had been disposed of; and if so, can you state what became of the same?

Answer. I recollect something about a petition, but I do not know what became of it.

Question by same. You will please state if you know anything of the first propositions made by John Caldwell, to obtain a lease upon said lands; state the terms upon which he proposed to take a lease upon the school lands, if you recollect them.

Answer. I do not recollect.

Question 10th. Was a settlement ever made with Samuel Congdon during your time in office as commissioner? If not, state the reasons why a settlement was not made.

Answer. I do not think there was a settlement fairly, but the cause of failure I do not recollect.

Question. Did you ever hear S. Congdon say that his books were kept in New York, and by that means was not prepared to make settlement?

Answer. I do not recollect of hearing Congdon say anything about his books or the keeping of them.

Cross-examination.

Quest. 1st. What years were you one of the school commissioners, and in both of those years were there not moneys paid on the orders of the commissioners, once a thousand dollars in 1854, and once a thousand dollars in the year 1855, by said Congdon?

Answer. That he paid about one thousand each year. Answer: I was school commissioner in the years of 1854 and 1855.

And further this deponent saith not.

WILSON ABERCROMBIE.

James H. Leming, aged about thirty-five years, who being duly sworn on the Holy Evangelists of Almighty God, deposeth as follows:

Question 1st by complainants' sol. Are you acquainted with the parties to this suit, and are you acquainted with lands in dispute?

Answer. I suppose I am.

Question 2 by same. Please state all you may know about the execution of a lease upon said school land about the 21st of May, 1850, to John Caldwell and James V. Symons, and the means used by the said Caldwell and others to obtain said lease, if any were used.

Answer. I know something about a lease made to Caldwell & Symons, I suppose about that time, of the school land which is now in dispute; I cannot now recollect all the conversation that did take place about it.

Question 3d. Please to state who wrote said lease, if you know.

Answer. To the best of my knowledge, John Cardwell wrote it.

Question 4th. Please to state the terms upon which Caldwell first offered to take said lease; what interest did he propose to give the towsnhip, and what interest did he propose to keep himself?

Answer. I do not recollect what the proposals were.

Question 5 by same. What was your understanding of the terms of the lease at the time it was made; what interest did you understand was reserved by said lease to the township?

Answer. I think that the children of the township were to have

the one-seventh part of the *neut* proceeds of said lease, to the best of my recollection at the time.

Question 6th. Did you sign said lease at the same time the other commissioners signed the same?

Answer. I did not.

Question 7. Please state the reason why you did not sign the same at the time the other commissioners signed it.

Answer. Because I was not fully satisfied at that time to sign it.

Question 8th. Please to state how long after the other commissioners signed said lease before you signed the same, and also state what representations were made by John Caldwell, or others, to induce you to sign the said lease.

Answer. I think, to the best of my recollection, I signed it the next day; and the inducement *were* that it would be of great advantage to the township.

Question 9th. If John Caldwell made any representations to you as to the amount of interest reserved to the township by the terms of said lease, you will please state what he said, near as you can recollect.

Answer. I cannot now recollect what John Caldwell stated about it.

Question 10th. Who was present besides the *the* said John Caldwell at the time you signed said lease?

Ans. No person except my wife and children.

Question 11th. Please to state if you saw any written agreement purporting to be an agreement between John Caldwell and William H. Hancocke, giving the said Hancocke some interest in said lease; and if so, what interest was he, Hancock, to have, and for what purpose was it given?

Answer. I think I did, to the best of my recollection, and what interest Hancocke was to have I do not recollect; the interest was given to Hancocke for helping Caldwell obtain the lease, was my understanding.

Question 12th. At the time the lease was executed, *have* there been any work done on the said school lands to test it for copper, either by Caldwell or others?

Answer. I think not, to the best of my recollection.

Question 13th by same. If you know of John Caldwell giving or offering to give anything to yourself, or any others of the commissioners, to induce either of you to sign said lease, you will please state it.

Answer. I do not recollect that I heard of anything being given as offered.

Question 14. Please state if you know of any offers of anything being made by William H. Hancocke to any of the commissioners, to induce them to sign said lease.

Answer. I never heard of anything being given or offered by Hancocke, to the best of my recollection.

Question 15th. Did Hancock ever talk to you, or any of the other commissioners, to try to persuade you or them to sign said lease?

Answer. I do not know about him talking to others; he talked to me some little about getting me to sign the lease, and persuaded me to *to* so.

Cross-examination.

Question 1st. Can you read writing, and write; did you read over said lease, or was it read over by the other commissioners before being signed?

Answer. I can at this time, but then I could not write much or read writing well, and I did not read the lease myself before signing it; it was read to me; John Caldwell read it to me.

Question. You say you did not read the lease, but it was read to you by John Caldwell; state if all three of the commissioners *was* present when the lease was first read, and where did the two commissioners sign it at the day before you signed it?

Answer. It was at B. C. Dugger where the lease was first read, but do not recollect whether the two commissioners signed it there or not.

And further this deponent saith not.

J. H. LEMING.

Next came William Kimsey, aged about sixty-one years, who being duly sworn upon the Holy Evangelists of Almighty God, deposeth and saith:

Question 1st by complainants' sol. Are you acquainted with the parties to this suit; and how long have you resided in this township?

Answer. I am, some of them; I have lived in this township about ten years, between two range lines made by Tipton and Hannah, but attached to this township; if Tipton's line is the true line, he is in this township; but if Hannah's line is the true one, I am not.

Question 2d. Do you recollect anything of the taking of the vote for or against the sale of the school land in this township; if so, did you vote in that election, and how did you vote?

Answer. There was a man appointed to go round among the people to take vote of the township, and he came to me and I voted to sell the land.

Question 3d. You will please state if, after the lease was given upon said land, there was any petition gotten up by the people expressing their dissatisfaction, and all you may know about it; who had it, if you saw it?

Answer. I do not recollect that ever I saw any.

Cross-examination.

Question 1st. Was the Tipton range line referred to by you run by John B. Tipton, the principal surveyor of the Ocoee district?

Answer. I am informed generally that John B. Tipton run the line referred to, and I am also informed that Tipton was principal surveyor.

Question 2d. During the time you have resided in this of country have you always received the benefit of the fund derived from the school land that was, and which is now in dispute, and have you been treated as entitled to it?

Answer. I always did receive the public funds when called for.

And further this deponent saith not.

WILLIAM KIMSEY.

Humphrey P. Kimsey, aged about twenty-nine years, being next introduced, after being duly sworn upon the Holy Evangelists of Almighty God—

Question 1st. Did you live in the fourth fractional township in range five east, of the basis line, in the Ocoee district, about the month of February, 1850; and if so, did you vote in the election in said township, for or against the sale of the school land in said township?

Answer. I lived with my father, William Kimsey, who has been examined in this cause; I did *note* vote in the election referred to above.

Question 2d. Were you old enough at the time of said election to vote in elections for county or district officers, for members of the legislature?

Answer. I was old enough.

Question 3d. You will please state if you know whether John Kirby, Elijah Kirby, and Monroe Kirby lived in said township at the time said vote was taken.

Answer. I think that they did.

Question 4th. Do you know where the line of the township runs at that place?

Answer. I do not know exactly where the line is opposite to that place, but it is not far from that place.

Question 5th. Do you know whether Elijah Kirby and Monroe Kirby were old enough to vote for members of the legislature at the time of taking said vote?

Answer. According to my understanding they were both older than *than* I am, and at that time were old enough to vote in any election.

And further this deponent saith not.

H. P. KIMSEY.

Thomas G. Kimsey, being next introduced, aged about *about* thirty-eight years, and being duly sworn on the Holy Evangelists of Almighty God, deposeth as follows:

Question 1st by complainants' sol. Please to state where you resided in the month of February, in the year 1850.

Answer. In the corner of this township.

Question 2d. Did you reside between the disputed lines mentioned in William Kimsey's deposition?

Answer. No, sir.

Question 3d. If you know anything of the means used improperly by John Caldwell, or others for him, in order to influence the commissioners of said township to execute a lease upon the school land in said township, you will please state it; or if you heard John Caldwell or any of the other defendants state anything in regard to undue influence being used, please state what they said.

Answer. I do not know of anything, only what John Caldwell told me. He complained of Symons, for not paying his part towards getting up the lease on the school property, or something to that amount; stating, at the same time, he had paid his part. These payments were made to William Hancock, and to be made to him and some other man, to help get up the lease.

Cross-examination.

Question 1st. In the conversation with Caldwell, was a sum of money named in it; was that sum two hundred dollars?

Answer. I do not recollect that Caldwell named any sum of money that was to be given.

Question 2d. You will state if, in the conversation alluded to, Caldwell stated that Hancock was to advance money to help test the property, and complained that he had not done so, and he, Caldwell, had to buy out said Hancock's interest under the contract, by which he, Hancock, was to have an interest in the property?

Answer. That Caldwell said nothing about that to me.

Question 3d. How long since is it this conversation you have stated should have taken place; who was present, and where was it at?

Answer. That it was at the time I was working for Congdon and Caldwell, at the Tennessee mines; the conversation took at the Tennessee mines; there might have been others present, but I do not remember.

And further this deponent saith not.

T. G. KIMSEY.

And thereupon adjourned the taking of depositions until to-morrow morning, 8 o'clock, this 12th day of May, 1857.

BENJAMIN MANN,
J. P. for Polk County, Tennessee.

May 13th, 1857.

Met pursuant to adjournment; and Wiley J. Harbin, being next introduced, aged about forty-seven years, and being duly sworn on the Holy Evangelists of Almighty God, deposeth as follows:

Question 1st by complainants' sol. Are you acquainted with the parties to this suit?

Answer. I suppose I am.

Question 2d. Do you know the lands in dispute?

Answer. I do.

Question 3d. Please state how long you have been a citizen of the township; were you a citizen of the township at the time of the sale and leasing of the sixteenth section of fractional township four south, and range five east, of the basis line, in the Ocoee district?

Answer. I have lived in this township since the spring of 1844; I was living in this township when the school section was leased and sold.

Question 4th. If here at the sale, did you vote in an election held near the Old Forge in the township, for the purpose of ascertaining the sense of the voters in regard to selling said school land, and do you know the result of that election?

Answer. I don't think I was at an election at the Old Forge.

Question 5th. Please state if you recollect when the vote of the people was taken by William S. Conner, a commissioner, to ascertain the sense of the people in regard to selling said land; and if you know of any undue influence being used by any persons to induce the voters to vote for said sale, either in the way of money or property being paid, or promises of the same, you will state all you may know about it.

Answer. I remember the vote was taken by W. S. Conner, as commissioner. I know of no undue influence being used by any person to induce the voters to vote for said sale, either in money or otherwise.

Question 6th. Were you acquainted with Nelson Carter and Frederick Carter and Jackson Carter at the time of the vote in this township of which you have spoken? and if so, please state if they were all legal voters in this township at that time, and all you may know about their appearance, complexion, and what race of people they or any of them were reported to be.

Answer. I was acquainted with Nelson, Frederick, and Jackson Carter at the time of taking the vote; I do not know whether they were legal voters or not; they were dark complected; they were said to be part negro, though I think they claimed to be part Cherokee Indian.

Question 7th. Please to state what degree of relationship they bore to the African race, from appearance—say half, fourth, eighth,

or sixteenth, or what amount either of them had of the African blood, if any, and if you ever knew of either of them being refused his vote on account of his color.

Answer. I think some of them look like they might be one-fourth African or Indian. I think they refused their vote.

Question 8th. Please to state the appearances of their hair; was it straight, or inclined to be kinky?

Answer. It was *it was* inclined to be kinky.

Question 9th. If you ever noticed the color of the white part of their eyes, or of either, please to give the color as near as you can.

Answer. I do not know that I ever noticed the color of their eyes.

Question 10th. Have you ever been acquainted with any persons mixed with Indians and white blood, and do you know the appearance of such people when so mixed?

Answer. I have been acquainted with persons mixed with Indian and white blood; I suppose I know the appearance of such people when so mixed.

Question 11th. You will please state if you ever saw any person mixed with the Indian and white race whose hair was inclined kinky?

Answer. I don't remember that I ever did.

Question 12th. From the color of the skin and appearance of the hair of Nelson Carter, what degree of African blood did you take him to have?

Answer. I think he looks like he might be one-fourth African.

Question 13th. If you knew of any illegal votes being given in the election for or against the sale of school lands in this district, aside from the Carters, either by reason of being under age or from not having resided in this district a sufficient length of time, or from any other cause, you will please state all you know about it.

Answer. I do not know of any.

Question 14th. Were you acquainted with Emanuel Thurman, Patrick Nash, A. B. Cantrell, and Sutton Miller; were they or any of them legal voters in this township? If any of them were not, please to state the reasons why.

Answer. I was acquainted with Emanuel Turmon, Patrick Nash, A. B. Cantrell, and Sutton Miller; I think Patrick Nash was not a legal voter, from the fact that he was not a citizen of the United States; I think Miller was not a legal voter, from the fact that he served a time in the penitentiary of Georgia, and had not been restored to citizenship; the others, I do not know whether they were legal voters or not.

Question 15th. You will please state if you were acquainted with M. W. Goss, B. A. Wyde, Elijah Kirby, J. M. Kirby, Elisha Southerland, and D. L. Dilbeck; and if so, please state whether

or not they were qualified voters in this township at the time the vote was taken by William S. Conner, in regard to the sale of the school land in this township.

Answer. I was acquainted with all the last named men, but I do not know whether they were all legal voters or not; I think M. W. Goss was a legal voter; I think the Kirbys and Dilbeck lived in the adjoining township, but claimed to be attached to this; the others I do not know they were legal or not.

Question 16th. State whether the Kirbys and D. L. Dilbeck obtained the benefit of the schools in this township, and were permitted to enjoy those benefits, and state whether there was at that time, or has there been since, any schools in the township in which Kirbys and Dilbeck lived.

Answer. I think Kirby did; I don't think Dilbeck did; I don't think there was a school in that township then; don't know whether there has been since or not.

The respondents, by their solicitor, come and except to all those parts of the foregoing deposition which seek invalidate the legality of the voters who voted in the election taken by Mr. Conner, under order of the county court of Polk county, for the sale of the land in dispute, and for cause of exceptions allege that said testimony is incompetent on the ground of interest in the witness, and also on the ground of its being incompetent for complainants to impeach the acts of said Conner in the premises. Respondents pray the decision of the chancellor thereon.

GEO. W. ROWLES,
Solcts. for Respondents.

Cross examination.

Question 1st. Have you known the respondent, Samuel Congdon, since he come to Polk county, Tennessee? If so, you will please state in what year, and time of the year, he come, and when he commenced mining operations on the lands in dispute.

Answer. I have known Samuel Congdon since he came to Polk county, Tennessee; I think he commenced operations on the school land some time in the year 1851, but don't recollect the precise time.

Question. Did you know him before he came to Polk county, from any part of Tennessee, or previous to his coming was he a citizen of another State; and if so, what State?

Answer. I did know him before he came to Polk county; I understood he came from New York.

Question. Did you ever see the defendant, Charles Congdon; if so, when for the first time? State of what State is said Charles Congdon a citizen.

Answer. I have seen defendant, Charles Congdon; don't recol-

lect precisely the time; I was informed he was a citizen of New York; I think it was in the year 1855 I saw him; I dont recollect of ever seeing him but once.

And further this deponent saith not.

W. J. HARBIN.

Samuel McJunkin, aged about sixty-three years, being next introduced and duly sworn on the Holy Evangelists of Almighty God, deposeth as follows:

Question 1st. Are you acquainted with the parties of this suit?

Answer. I think I am.

Question 2d. Were you a citizen of the 4th fractional township south, in range five east, of the basis line, in the Ocoee district, in Polk county, Tennessee, when the vote was taken to sell the school section in said township?

Answer. I was not.

Question 3d. If you know anything of the means used to influence the voters of said township to vote for said sale, please state it.

Answer. I do not.

Question 4th. If you know anything of the circumstances attending the lease of said school land, please state what you remember.

Answer. I do not anything about the leasing of the school land.

Question 5th. Please state what you may know about a certain petition gotten up by the people in said township to try to set the lease or sale aside, or for what purpose was said petition gotten up, if any was gotten up, who had it, and all you may know about it.

Answer. I saw Elias Davis come Mr. McCoy's, and had a petition to take the vote of the people, whether they would establish a previous vote of the people to sell the school property or not; Mr. McCoy voted against it.

Cross-examination.

Question. Was you present when the school land was sold? If so, *did* the above proceeding of Elias Davis transferred before or after said sale?

Answer. I was present when the school land was sold. To the best of my recollection it was afterwards.

Question. How long afterwards, to the best of your recollection? how many years since?

Answer. It was not long afterwards, if at all afterwards; it was soon before or soon after the sale, and I cannot tell which.

And further this deponent saith not.

SAMUEL McJUNKIN.

Elias Davis, aged about forty-four years, being duly sworn on the Holy Evangelists of Almighty God, deposeth as follows:

Question 1st. Are you acquainted with the parties to this suit, and the lands about which this suit was instituted, being school section in fractional township four south, and range five east, of the basis line, Ocoee district, in Polk county, Tennessee?

Answer. I know some of the parties; I know the land in dispute.

Question 2d. Were you *you* a citizen of this township at the time the vote was taken to sell the school land in it, and at the time the lease was taken thereon?

Answer. I was living in the township.

Question 3d. If you know anything of the influence being brought to bear by John Caldwell or others, for him to obtain the lease on the school land, you will please state what you may know about it.

Answer. I cannot say that I know of anything.

Quest. 4th. Please to state if you ever heard John Caldwell, while negotiating with the commissioners for said lease, say anything about the amount of interest the lease would secure to the children of the township; and if so, what did he say?

Answer. I never heard Caldwell say what interest would fall to the township till after the lease was taken. He said the township was secured in the per *seventh* cent. of the *neat* proceeds. This conversation was with B. C. Dugger, one of the commissioners.

Question 5. If any dissatisfaction was expressed by the people after the taking of said lease, or any movement made to have the same set aside, you will please state all you may know about it.

Answer. There appeared to be a good deal of dissatisfaction expressed by a portion of the people. There was a petition handed to me by Thomas Masten. I think that the object of the petition was to confirm the sale and set aside the lease of the school land. I took the petition and went about a while, and a great many signed the petition, and getting into the spirit and moving of the petition, concluded that they were making bad worse. Then I had a conversation with Squire Caldwell while the petition was in my possession, and my recollection is that Squire Caldwell had taken a great deal of pains to show me that the intention of the petition was to benefit a few individuals, and a prejudice to the township, and I thought so *to*. I never returned the petition to Masten; I *destroy* it, or done something with it; I do not recollect what.

Question 6th. Please state who were the few individuals whom Caldwell said, and you supposed, were to be benefited by setting aside said lease.

Answer. The purchasers of the land.

Cross-examination.

Question 1st. The Thomas Mastin to whom you have alluded *to*

in your examination in chief, was he or not then engaged in trying to buy and sell lands supposed to contain copper; was he or not a citizen of Polk county?

Answer. He was engaged in buying and selling copper property, or what was supposed to be copper property. He was a citizen of McMinn county, of the State of Tennessee.

Question 2d. You will please state if, while you had the petition spoken of by John Caldwell, called a meeting of the people of the township, and addressed the people on the subject of his and Symons' case, and in opposition to the object of said petition. If so, after that did the whole matter die out?

Answer. I was not present at the meeting, and do not know what was said or done.

Question. How long, according to the best of your recollection, was it after the land in dispute had been sold before this petition was handed to you by Mastin?

Answer. I would think some twelve or eighteen months; it might not have been that long.

And further this deponent saith not.

ELIAS DAVIS.

William S. Conner, aged about thirty-nine, being duly sworn on the Holy Evangelists of Almighty , deposeth as follows:

Quest. 1. Were you the commissioner appointed by the county court of Polk county, Tennessee, to take the vote of the *the* people of the 4th fractional township south, and range five east, of the basis line, to ascertain whether a majority of them were for or against the sale of the school land in said township; and did you proceed to take said vote?

Answer. I was appointed commissioner to take the vote of the people in this township. I took the vote.

Question 2d. Have you been acting as school commissioner up to that time? And if so, did you advertise an election to be held to ascertain the sense of the voters of this township in reference to selling said land before you was appointed by the county court? And if so, what was the result of that election?

Answer. I was a school commissioner up to that time, and advertised and held an election to get the vote of the people relative to the sale of the school land in the township. The majority of the township did not vote.

Question 3. If any efforts were being made about that time to get a lease upon the school land you will please state it, and by whom were those efforts made.

Answer. At that time there had been none.

Question 4. If you know the reason why the people did not turn out at that election you will please state it.

Answer. I advertised one time and no one met, and I found out

that the advertisement had been torn down. I then advertised again, and a few met me, and that was the election referred to.

Question 5th. When you were appointed by the county court to take the vote of the people of the township, in taking the vote did you not take votes of several who lived out of the township, but who claimed and obtained the benefits of the school fund in this township?

Answer. The respondents, by their solicitor, come and object to the above question, and say that it is incompetent for the complainants to prove, or attempt to prove by the witness, that the sworn return made by him to *to* the circuit court of Polk county, Tennessee, under the appointment of the county court, to take the vote of the qualified voters of the township, was a false return in any particular; also, that the witness is incompetent to impeach by his testimony in this cause his official acts and doings under the said appointment of the county court of Polk county, and to say he took the votes of such persons as designated in the question would impeach his official acts under the appointment and return made under the same; also, said witness is incompetent on the ground of interest; also, said witness is incompetent to impeach official acts of his if such impeaching testimony would affect the title of respondents, or either of them.

GEO. H. ROWLES,
Sol. for Respondents.

I sustain the exceptions.

BENJAMIN MANN, *J. P.*

And further this deponent saith not.

WILLIAM S. CONNER.

Samuel Denton, aged about forty-six years, being duly sworn on the Holy Evangelists of Almighty God, deposeth as follows:

Question 1st by complainants' sol. Were you a commissioner of the fourth fractional township south, and range five east, of the basis line, in the Ocoee district, Polk county, Tennessee, at the time the lease of said school land therein situated was executed to John Caldwell and James V. Symons?

Answer. I was one of the commissioners.

Question 2d. At the time you executed said lease, what amount of interest in the proceeds of the mineral did you understand was reserved by the terms of said lease to the children of the township; did you understand it to be that they were to have one dollar out of every seven dollars, or seven dollars out of each hundred of the net proceeds?

Answer. I understood that the township was to have the seventh per cent. of the *neat* proceeds.

Question 3d. By seven per cent. of net proceeds, did you un-

derstand that the township were to have one dollar out of every seven, or seven dollars in the hundred?

Answer. I understood that the township was to have seven dollars out of every hundred dollars of the *neat* proceeds.

Question 4th. At the time of taking vote in this township to sell the school lands, do you know whether John Kirby lived in the township or not; state whether he lived in or out of the township?

Answer. He lived in the other township adjoining.

Question 5th. At the time of taking said vote, was there any other John Kirby living in the township?

Answer. There was no other John Kirby living in the township at that time.

Question 6th. Were you acquainted with Emanuel Thurmon, Patrick Nash, A. B. Cantrel, Johnston Suit, junior, and A. McBee, at the time said vote was taken to sell the school land in this township; if so, were they citizens of the township entitled to vote in said election or not?

Answer. I was acquainted with them; I do not know about Emanuel Thurmon; I do not think that Patrick Nash had citizenship, and McBee lived out of the township; as to Johnston Suit I cannot tell whether he was a legal voter or not; his father lived in Georgia at that time, and he made it his home at his father's.

Question 7th. Please to state if B. A. Hyde, M. W. Goss, and John Ledford, were living in said township and entitled to vote?

Answer. B. A. Hyde lived in the other township at that time, and John Ledford lived in this township, and was a qualified voter; M. H. Goss also lived in this township, and was a qualified voter.

Question 8th. Please to state, if you know, whether Thomas Carter, Nelson Carter, and Frederick Carter, were qualified voters in this township at the time said vote was taken; also state what nation of people they were reputed to be by those who knew them, and state their appearance, the character of their hair, and color of their skins.

Answer. From the appearance of the Carters, I did not think they were qualified voters, and believe they are descended from the negro race.

Question 9th. From the appearance of the skin, the hair, and general features of the Carters, mentioned above, what degree of relationship did they bear to the negro or African race; were they a half, a fourth, or an eighth, or what relationship?

Answer. I suppose them to be a fourth negro.

Question 10th. Were there any other Carters of the names of Nelson, Thomas, and Frederick, in the district, except those to whom you have referred.

Answer. There are no others of these names.

Question 11th. Were you in the employment of John Caldwell at the time the lease was executed to said Caldwell and James V. Symons, upon the school land, or had you been in his employment before that time?

Answer. I was not employed by them.

Question 12th. If you know, please to state whether any work had been done by Caldwell or his hands in testing the school property, before the lease was executed.

Answer. There had been none to my knowledge.

Question 13th. If John Kirby and A. McBee voted in this township when the vote was taken, because they showed the benefit of the township school, were there not any others living out of the township, but enjoying the benefits of this township's schools, and as equally entitled to vote in said election?

Answer. There were others living out of the township, enjoying the benefits of the school funds; there were some of them that did not vote.

Cross-examination.

Quest. 1st. Do you recollect the year and month in which Mr. S. Conner took the vote under order of the county court, of which you have been speaking, in your examination in chief?

Answer. I do not recollect the year or the month.

Next came William Donaldson, aged about thirty years, who, being duly sworn on the Holy Evangelists of Almighty God, deposeth as follows:

Question 1st by complainants' sol. Are you acquainted with the parties to this suit?

Answer. I am not much acquainted.

Question 2d. Were you a citizen of this school district in the year 1850, when the school lands in dispute *and* sold; if so, do you anything of the influences used in getting said sale ordered? If any, please state all you may know about it.

Answer. I was a citizen at that time, but do not know what influences were used to procure a sale of the school land.

Question 3d. Did you ever hear any of the defendants to this suit, John Caldwell, Thomas H. Callaway, or any other of the defendant's say that they had paid anything to get said vote in favor of the sale?

Answer. I never did.

And further this deponent saith not.

his
WILLIAM ⋈ DONALDSON.
mark.

Question 2d. Were you along with said Conner when he went through the township taking the vote?

Answer. I was not with Conner when he went through the township taking the vote. He came to my house.

And further this deponent saith not.

SAMUEL DENTON.

STATE OF TENNESSEE,
Polk County.

I, Benjamin Mann, an acting justice of the peace for the county aforesaid, do certify that the foregoing depositions, from page 1st to page 42 inclusive, were reduced to writing by me and signed by the defendants in my presence, except the deposition of Wiley J. Harbin, who wrote his own answer to the first and second questions of John Rodgers' deposition, which were written by R. M. Edwards, by consent of respondent's solicitor, Geo. W. Rowles; that R. M. Edwards, solicitor for complainants, and Geo. W. Rowles, solicitor for respondents, were present during the examination; that I am not of counsel or attorney or of kin to either of the parties, nor interested in this cause.

Given under my hand and seal, this 13th day of May, 1857.

BENJAMIN MANN, [SEAL.]
J. P. for Polk County and Commissioner.

State of Tennessee to Benjamin Mann, Esq., greeting:

Know ye, that we have appointed you and by these presents do give unto full power and authority to examine all witnesses, as well on behalf John Goodman, Yancey S. Bledsoe, school commissioners, for the 4 fractional township, range 5 east, in Polk county, Tenn., complainants, as of Thomas H. Callaway, Samuel Congdon, the Tennessee Mining Company and others, respondents, or either of them, in a matter of controversy now pending in the chancery court at Benton, Tennessee, for the district composed of the county of Polk, in the 5th division of Tennessee, on their respective corporal oaths, taken before you in due form of law, or their affirmation if Quakers, and you reduce such their examination to writing, stating, as near as may be, the ages of deponents, the parties present, and the time and place of taking the depositions; and when you shall have taken them, you are to send the same without delay to the clerk and master of our said court at Benton, closed up under your seal, distinctly certified and set forth, together with this writ.

Witness J. H. Alexander, clerk and master of our said court, at office in Benton, this 1st Monday of Feb'y, 1857.

J. H. ALEXANDER, *C. & M.*
By JAMES SMITH, *D. C. & M.*

STATE OF TENNESSEE,
Polk County.

Be it remembered, that on this 9th day of July, A. D. 1857, I,

Benjamin Mann, an acting justice of the peace for the county aforesaid, by virtue of the power in me vested by the commissioner, hereto prefixed, to examine all witnesses, as well on behalf of John Goodman and Yancey S. Bledsoe, commissioners of the 4th fractional township south, range five east, of the basis line, Ocoee district, Polk county, Tennessee, complainants, as of Thomas H. Callaway, E. Waterhouse, John Caldwell, the Tennessee Mining Company and others, respondents, or either of them, in a matter of controversy pending in the chancery court at Benton, in Polk county, Tennessee, did cause to come before me, at the store of Boyd & Biggs, near Hiwassee copper mines, Polk county, Tennessee, Alexander McBee, aged about fifty-three years, as a witness on behalf of the complainants in said cause, and the said Alexander McBee being duly sworn on the Holy Evangelists of Almighty God, deposeth and saith *and* follows:

Question 1st by complainants' solicitor. Are you acquainted with the lands in dispute between the parties above mentioned, and how long have you been a citizen of the township?

Answer. I am acquainted with lands in dispute. I recently moved into this township, though I did live in it from forty-nine to fifty-two.

Question 2d. Were you residing in this township at the vote was taken for or against the sale of the school land in the township by William S. Conner; if so, did you vote in said election; if so, how did you vote?

Answer. That he was living in the township at that time; I did not vote in the election spoken of; I was away from home at that time.

Question 3 by same. Was there at that time any other Anderson McBee living in this township, who was entitled to a vote?

Answer. There was not.

Question 4th. How long had you been a citizen of this county of Polk at that time, and at what time did you move into this township in the year 1849?

Answer. In the latter part of the winter or fore part of the spring of the year eighteen hundred and forty-nine he moved into this township, and from the year of forty-five up to that time had been in the county.

Question 5. Please to state, if you know, where the line of this township runs near the house of A. B. Campbell; does it include his residence or not? and state your means of knowing about it.

Answer. I do not know whether Mr. Campbell lived in this township or the Turtletown township, at the time of the election referred to.

Question 6. Please to state, if you know, whether William Kimsey and John Kirby were living in this township or not at the time the vote was taken?

Answer. They were neither of them living in this township at the time the vote was taken in said election. William Kimsey lives in some sixty or seventy yards of the township line.

Question 7. Please to state how you come to know where said line was.

Answer. I have seen the marked line of what was said to be the township line; I did not see the line surveyed. I have written deeds for land coming to the same line, and designated to be the township line; I wrote the deed for the land that William Kimsey now lives on, which lies west of the township line; I wrote another deed for him, which lies east of said line.

Question 8th. Please to state if T. G. Kimsey lived in the same house with the said William Kimsey at the time of taking said vote, above referred to?

Answer. No, he lived in this township.

Question 9th. Were you acquainted with John Shilton at the time said vote was taken; if so, was he a citizen of said 4th township; if so, how long had he lived in the county of Polk?

Answer. I do not recollect; he was living in the *this* township at the time the vote was taken, but whether he had lived here long enough to entitle him to a vote or not I cannot tell.

Question 10th. Please to state, if you know, whether John Ledford lived in this township in the *moth* of January and Feb'y, 1850—the time of taking said vote.

Answer. I do not recollect.

Question 11th. Had you any sons old enough to vote at the time said vote was taken; if so, where were they living at that time?

Answer. I had none old enough.

Cross-examination.

Question 1st. Where was the election held at for the sale of the school land, in which election you have stated, in your examination in chief, that you did not vote?

Answer. I do not know where the election was held at. I was not at the election; I merely heard that an election was held.

Question. Do you or not know that, on a majority of all the qualified voters of the township having failed to vote for or against the sale of the land, that William S. Conner was appointed by the county court to go round in the township, and take the sense of the voters on the subject of the sale of the school land, and report to court?

Answer. Yes, I suppose that was the way; Mr. Conner himself informed me that the court had appointed him to go round and take the sense of the people on the question of selling the school land.

Question. Did Mr. Conner *as* you, or did you tell him you were

in favor of selling the school land; that all that have in any manner heard taken place on this subject?

Answer. I never *said* him; at the time he was out, taking the sense of the people, he was at my house, I suppose—I was not at home. This information I got from my wife, after I came home. There was no conversation took place between him and me in regard to it.

Question. At the time Conner told you he had been appointed to *make* the sense of the people on the sale of the school land, did you then or at any other time state to him whether you were favorable or opposed to a sale of the school land? Do you or have you learned that you were reported by Conner as being favorable, or for a sale of the school land; and if so, do you know why Conner so reported you?

Answer. I have no recollection that I did so express myself to him. I never learned it; *I* it was entirely unknown to me.

Question. You have previously stated that, at the time Conner informed you that had been appointed to take the sense of the people as to the sale of the school lands, you have recollection of telling him you were in favor of said sale; can you say you did not tell him you were in favor of it—its sale?

Answer. No, I cannot say in the positive that I did not tell him; I have no recollection that I ever so expressed myself to him.

Re-examination by Compl'ts' Sol'r.

Question 1st. Please to state at what time you had the conversation above spoken of with William S. Conner, whether it was before or after Conner had taken the sense of the people on the question of the sale; and if after that time, how long?

Answer. If my memory serves me right, I think it was before he went out to take the sense of the people. I do not recollect of having any conversation with Mr. Conner afterwards.

Question 2d. Did you see him have any paper and ink, to set down names, and did he ask any question relative to your feelings in reference to the sale of the school land?

Answer. Not that I have any recollection of. Mr. Conner merely told me he was appointed by the court.

Question. Please to state if Mr. Conner had had a paper drawn up *proposely* for that purpose, to take the sense of the voters, and had asked you the questions as to your feelings on the question, could you or not recollect it?

Answer. I saw no such paper.

And further this deponent saith not.

ALEXANDER McBEE.

William Mills, aged about thirty-eight years, being duly sworn

on the Holy Evangelists of Almighty , deposeth and saith as follows:

Question 1st by compl'ts' sol. Are you acquainted with the parties to this suit, the land in litigation, and were you a citizen of the township in which the land lies, which is in dispute, at the time of the sale of the same; and if so, how long had you been living in said township?

Answer. I am acquainted with the parties to this suit, also the lands. I was not a citizen of the township in which the land lies at the time of the sale.

Question 2d. If you know anything of the circumstances attending the procurement of the vote for the sale of the school land in dispute, either of your outside influence being brought to bear by the purchasers of the land, or by others for them, you will please state all you may know about it.

Answer. As a special commissioner was appointed by the county court to take the vote, and I living out of the township at the time, I know nothing about what was done in that election.

Question 3d. If you knew of any persons being employed by Thomas H. Callaway, or others for him, to bring about a sale of said land, and to get the votes to go in favor of the sale, you will please to state all you know about it.

Answer. E. Waterhouse and Thomas H. Callaway requested me to see the commissioners some time previous to the votes being taken, and to get them to hold an election according to law, to bring about a sale, telling me, at the same time, if they should *become of the land same*, that I should be interested in the same, or that they would pay me well for my trouble. I accordingly *seen* the commissioners, and also got M. H. Hancock to see James H. Leming, one of the commissioners, who was a relation of Hancock's, thinking he could do more with Leming than I could—though Callaway and Waterhouse, or either of them, never asked me to do anything unlawful in the matter, as to influencing voters or procuring the same to be done.

Question 3d. What interest was you to receive, provided they became the purchasers?

Answer. No fixed interest.

Question 4th. If you know, please state whether or not John Ledford lived in or out of this township, at the time the sense of the voters was taken to sell said land.

Ans. I did not know John Ledford at that time, and do not know whether he was a citizen of the township or not.

Quest. 5. Please to state whether William S. Conner lived in this, the 4th fractional township south, in range five east, of the basis line, in the Ocoee dist., in Polk county, Tennessee; and if so, how long had he been a citizen of said township; was he a legal voter in the same?

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Ans. I think he was a citizen of said township, and had lived in the same for some time, and a legal voter so far as I know.

Question 6th. Please to state whether Benjamin A. Hyde was a citizen of this township at the time of taking the sense of the vote in regard to said sale?

Ans. As Benjamin A. Hyde has lived in different parts of the 8th civil district, I cannot say whether he lived at that time in fractional township 4 or not.

Cross-examination.

Question. Was William S. Conner the special commissioner appointed by the county court, to go round and take the sense of the people of the township as to the sale of the land?

Answer. He was.

Question. Before the appointment of Conner, for the object *avove* stated, had an election been held in the township, and was Conner appointed to go around and ascertain the sense of the qualified voters as to a sale of the land, because in said election a majority of the qualified voters of the township had failed in said election to vote either for or against a sale of the land as directed by law?

Ans. There had been one or two elections to be held, and a majority of the qualified voters failed to attend, and the same was made known to the county court, and William S. Conner appointed by said court to go around and take the vote.

Quest. The request spoken of in your examination in chief as having been made of you by Waterhouse and Callaway; was it anything more than to get an election held in order that the people might determine the question at the *poles;* were you requested by them to make any promises or hold out any inducements to the voters to influence their votes one way or the other?

Ans. Their request was to procure an election by the commissioners holding an election; and should that fail, they also requested me to attend at the county court, and use my influence to have a commissioner appointed to take the vote, though they did not request me to waive or influence the voters, or to procure the same to be done.

And further this deponent saith not.

WM. MILLS.

Moses R. Denton, aged about thirty years, who being sworn on the Holy Evangelists of Almighty God, deposeth as follows:

Question 1st. Are you acquainted with the lands in dispute, to wit, the 14th section of fractional township four south, in range five east, of the basis line, in the Ocoee district, Polk county, Tennessee, being the school section of said township?

Ans. I am acquainted with the lands in dispute.

Quest. 2. Were you residing in said township in the month of

February, 1850, at the time William S. Conner as a special commissioner, went round to take the sense of the legal voters in regard to the selling the school land in said township; and if so, had you lived in said township and county long enough to entitle you to vote in an election for members of the legislature?

Ans. I was. I had been living in the township long enough to vote for members to the legislature.

Quest. 3. Did William S. Conner at any time during the month of February, in the year 1850, come to you for your signature to any paper, in reference to the sale of the said school section, or ask you how your feelings were in that matter; if so, how did you place your name or authorize him to place it? Please state all about it.

Ans. I do not recollect. I heard of him being through the country; but if I ever signed any paper I not recollect.

Quest. 4. If William Conner had come to you with a paper drawn up for the purpose getting names for and against sale of the school lands, and had asked you how you would have your name placed, do you not think you could have recollected it?

Ans. It looks like I would, but it may have slipt my memory.

And further this deponent saith not.

M. R. DENTON.

Benjamin C. Dugger, aged forty-three years, being duly sworn on the Holy Evangelists of Almighty God, deposeth as follows:

Quest. 1st. Are you acquainted with the parties this suit? Do you know the lands in dispute, to wit, the sixteenth section of fractional township four south, in range five east, of the basis line, in the Ocoee district, Polk county, Tennessee?

Ans. I am acquainted with Mr. Congdon, and the most of the parties, and also the land in dispute.

Quest. 2d. Were you a citizen of said township at the time William Conner took the sense of the *votes* in the same, for or against the sale of the school land therein; if so, how long had you lived in said township?

Ans. I was a citizen of the township at that time, and been from three to five years; the precise time I cannot say.

Quest. 3. Please state if you know whether John Ledford lived in said township at that time?

Ans. I do not recollect whether he did or not at that time.

Quest. 4. State whether not William S. Conner lived in said township at the time he took the sense of the voters in reference to the sale of school land; if so, was he a legal voter?

Ans. He lived in the township at that time, and he was a legal voter, and I had known him some three years before that time, in the same township and county.

Quest. 5. Were you acquainted with Emanuel Turman and

Patrick Nash, at the time the sense of the people was taken as aforesaid; if so, please whether they resided in said township, and if so, how long, and were they qualified voters in said township?

Ans. I was acquainted with Emanuel Turman and Patrick Nash; they were both citizens of this township, and I had known them some three or four years; from the knowledge I have, I do not think they were. Patrick Nash stated to me, that he was brought up in Ireland, and had not been naturalized; that my reasons for *think* he *he* was not a legal voter, *the* was a fuss raised about some property between him and his mother, and he was claimed to be under age at that time, which was after the election referred to had taken place, as I think.

Quest. 5. Please to state if you know, and if you do not know, give your best opinion as to whether Nelson Carter, Frederick Carter, and Jackson Carter, were qualified voters in said election township; and give your reasons for that opinion.

Ans. They have the appearance of being colored or mixed blooded, and the degree of mixture I would suppose to be from a fourth to a sixth of negro or Indian.

Question 6. Please state what is the appearance of their hair, eyes, and color of the skin, of the said Carters.

Ans. The appearance of their hair is generally dark, but do not recollect whether it is kinky or straight, and they are dark-eyed; their skin has a thick, dark appearance.

Question 7th. If you were present at an election held by the school commissioners in this township, for or against the school land in this township, in January or February, 1850, you will please state who and how many attended at said election, and all you may know about it.

Ans. The election was held at my house. I was living at that time on the school property. I think, if I mistake not, William Conner held the election or came to hold, and there were but few persons there; I do not know how many; and I do not know the names now that did appear at the election.

Question 7. If you knew of any undue influences being used by persons in or out of the township, to obtain voters for the sale of the school land, please state what was done, what influences were used, and all you may know about it.

Answer. I do not know of any influences being used in the election, only what I used myself; I tried to use my influence to keep my people from voting for the sale of the school land.

Question 8. Please state if John McGinty was living in said township at the time the sense of the voters was taken in regard to the sale of said school land; and if so, had he resided therein long enough to be a qualified voter therein?

Answer. John McGinty had been in the township long enough

to be a legal voter, and, as I think, he resided in the township at the time of the election, though I will not be sure.

Question 9th. Were there any other persons in your employ at that time, who were qualified voters, whose name or names does not appear on this list? If so, state who they were.

Answer. I have no knowledge of any, *on* the one above named, viz., John McGinty.

Question 10th. Please to state if you were acquainted with D. L. Dilbeck, Elisha Southerland, M. W. Gass and Humphrey Kimsey, at the time the said Conner took the sense of the voters in this township; if so, did they live in said township, and were they qualified voters in the same?

Answer. I am acquainted with all the men with the exception of Dilbeck, and I think they have all lived in the township, and would all of them been qualified voters, provided they had lived in the township at the time of the election; it seems to me, that they had moved away before the election, except Gass, but I am not sure of that.

Question 11th. Please state if you have acted as school commissioner in this township since the lease was executed for the school land therein, and the Tennessee Mining Company has been working the same. If so, have you ever demanded a settlement with the agent of said company, and did he settle?

Answer. I served as school commissioner two years, and we three commissioners met and agreed to demand a settlement, and choose *to* men to make the settlement, viz., Troomy and Hamilton, and Mr. Coleman was to take the notice to Mr. Congdon, and I notified Mr. Troomy, and Hamilton was present at the time. Troomy went at the appointed time to Major Congdon's office. I myself was called in another direction, and did not go to the appointed day; neither was Mr. Coleman there, as I understand, another commissioner, but Mr. Crumby attended, consequently there was no settlement. I was told that Mr. Troomy and A. B. Crumby attended.

Cross-examination.

Question 1st. The Carters, of whom you have spoken in your examination in chief, were they or not in the habit of voting at the elections held in the township for public officers, members of the legislature, &c.?

Answer. My notion is, they were in the habit of voting.

Question. At the time the land was ordered to be sold by the circuit court, who were then the common school commissioners for the township?

Answer. William Conner, John Dunn, and I do not recollect whether there was another commissioner or not.

Question. When the school land was sold, who was the commissioners *were* there, if other than the ones above mentioned?

Answer. Myself, James H. Leming, and Samuel Denton.

Question. Did you three commissioners serve out your term of three years; if so, who was elected to succeed you?

Answer. Myself and Samuel Denton served our time out, and Leming resigned before his time was out.

Question. Who was elected, after the time of Denton and yourself was up, to succeed you?

Answer. George M. Coleman and Harmon Brown, and William P. Hancock.

Question. Did the above three last mentioned commissioners serve out their time?

Answer. Brown and Coleman served out their time, and Hancock moved off; I am not certain but what Brown moved away a little before his time was up.

Question. Who was elected in the place of the last named commissioner at the expiration of the two years for which they were elected?

Answer. Myself, George M. Coleman, and A. B. Crumby.

Question. Did you commissioners serve out your two years, and who was elected as your successors?

Answer. As well as I recollect, we all served out our time—Doctor John Goodman, Yancy S. Bledsoe, and George M. Coleman.

Question. Did you know one William Crawford; if so, did he live in this township or not at the time of taking the sense of the people as to the sale of the school land?

Answer. I did know one William Crawford, and he lived in this Township, but I do not know whether he lived in the township at the time the sense of the people was taken.

Question. In your examination in chief, when you answer as to whether persons lived in the township at the time of taking the sense of the people on selling the school land, is not your recollection very indistinct on those points?

Answer. It very dim about it; so much so I dislike to be examined about it.

And further this deponent saith not.

B. C. DUGGER.

Adjourned the taking of these depositions until to-morrow morning, 9 o'clock.

BENJAMIN MANN,
J. P. for Polk County, Tennessee.

Friday, July 10th, 1857.—Met pursuant to adjournment, and thereupon appeared James A. Davis, aged thirty-seven years, who, being duly sworn on the Holy Evangelists of Almighty God, deposeth as follows:

Question 1st. Are you acquainted with the land in dispute; if

so, how long have you known them, and how long have you been a citizen of this township?

Answer. I am acquainted with the school land in this township. I have known the land some fifteen years. I have lived in this township the same length of time.

Question 2d. Were you a citizen of this township at the time William S. Conner, as commissioner, went around to take the sense of the people in reference to the sale of the school land in this township; if so, were you acquainted at the time most of the people of said township?

Answer. I was here at that time, and was acquainted with most of the people of the township at that time.

Question 3. Please state if you were acquainted with Emanuel Turman at the time of taking the sense of the people in reference to the sale of the school land; if so, was he a citizen of this township, of full age, and entitled to vote in elections for members of the legislature.

Answer. I was acquainted with him; he was a citizen of this township at the time of the vote being taken for the sale of the school land in this township; I do not know the age of Emanuel Turman at the time the vote referred to was taken.

Question 4. At the time of taking the sense of the qualified voters of this township, for or against the sale of school lands therein, as above mentioned, in the month of February, 1850, were you with M. W. Gass, D. L. Dilbeck, John McGinty, Elisha Southerland, and Humphrey Kimsey; if so, did they reside in or out of this township, or did either of them? State who of them lived inside, and who lived outside of this township at the time referred to.

Answer. I was acquainted with all the men, I suppose; I reckon McGinty was; I think he lived at the Forge at that time, and I do not know whether or not that Dilbeck lived in this township; I knew of one Dilbeck living at the Cockeram place; and as to Himsey, Southerland, and Gass, I cannot now recollect whether they lived in this township or not.

Question 5. Please state if you were acquainted with John Ledford at that time, to wit, during the month in the year 1850; if so, state if you know whether he resided in this township or not.

Answer. I do not recollect whether he lived in this township or not at the time the vote of the people was taken, or at time *to the* above referred to.

Question 6. At the taking of the vote above referred to in February, 1850, was you acquainted with Thomas Carter, Nelson Carter, Frederick Carter, and Jackson Carter? If so, state if you considered them legal voters or not; state the reason why.

Answer. I suppose I was; I cannot consider that Nelson Carter,

Thomas Carter, Frederick Carter, were legal voters in this township at the time the vote or sense of the people was taken for the sale of the school land; and also, I cannot consider Jackson Carter a legal voter, either. My reason for forming the above opinion relative to Carters above spoken of, is on the account of the color of Nelson Carter, Thomas Carter, and Frederick Carter, and Jackson Carter's mother, they being of dark color, and look like they are a mixture of negro or Indian, though Jackson Carter is not so dark as the rest of the other Carters spoken of; Jackson's *moth* is dark.

Cross-examination.

Question 1. The Carters of whom you have spoken in your examination in chief, were they in the habit of voting in elections for county and district officers, members of the legislature, &c.

Answer. I think the people suffered them to do so here, in Ducktown, at times, to the best of my recollection at this time.

And further this deponent saith not.

JAMES A. DAVIS.

STATE OF TENNESSEE,
Polk County.

I, Benjamin Mann, an acting justice of the peace within and for the county aforesaid, do certify that the foregoing depositions were reduced to writing by me, except the deposition of William Mills, who wrote his own deposition, and all were signed by the deponents in my presence; that R. M. Edwards, solicitor for complainants, and G. W. Rowles, solicitor for respondents, were present during the examination; that I am not of counsel or attorney, or of kin to either of the parties, nor interested in said cause.

Given under my hand and seal, this 10th day of July, 1857.

BENJAMIN MANN, [SEAL.]
Commissioner.

Bill of Costs.

Wm. M. Truman, const., for sum'ng 11 wit.....	$2 75
A. McBee, 1 day attend.....	75
Wm. Mills " "	75
R. M. Denton " "	75
B. C. Dugger " "	75
J. A. Davis, 2 " "	1 50
B. Mann, subp's.....	85
" taking 5 dep.....	5 00

BENJAMIN MANN,
Commissioner.

Know all men by these presents, that we, the Tennessee Min-

ng Company and Samuel Congdon, Euclid Waterhouse, and Thos. J. Campbell, are held and firmly bound unto John Goodman and Yancey S. Bledsoe, as school commissioners of the eighth civil district of Polk county, Tennessee, in the penal sum of ten thousand dollars: The condition of this obligation is such, that whereas the said John Goodman and Yancey S. Bledsoe, as school commissioners of the eighth civil district of the county and State aforesaid, did, on the 13th day of February, 1856, file their original and injunction bill in the chancery court at Benton, Polk county, Tennessee, against the Tennessee Mining Company, John Caldwell, James V. Symons, Thomas H. Callaway, Euclid Waterhouse, Samuel Congdon, and Charles Congdon, upon which said bill, by the fiat of his honor John C. Gant, of the date of the 21st February, 1856, an injunction was ordered to be issued by the clerk and master of the chancery court at Benton, Polk county, Tennessee; said injunction, by the terms of the fiat of his honor, to be dissolved and inoperative so soon as the respondents, or any one or more of them, gives a bond and security in the sum of ten thousand dollars, to account for said ores and minerals which may be removed and shipped by said company:

Now if said company shall well and truly account for said ores and minerals which may be removed and shipped by said company, according to the said fiat of his honor, if the chancellor should so decree against said company, then the above obligation to be null and void, otherwise to remain in full force and virtue.

Given under our hands and seals this 28th day of February, 1856.

TENNESSEE MINING COMPANY,
S. CONGDON, *Sup't.*
SAMUEL CONGDON, [SEAL.]
EUCLID WATERHOUSE, [SEAL.]
TH'S J. CAMPBELL. [SEAL.]

Taken and acknowledged before me this 28th Feb'y, 1856.
T. NIXON VAN DYKE,
Chancellor.

Know all men by these presents, that we, the Tennessee Mining Company, Samuel Congdon, superintendent, S. Congdon, James Gamble, Samuel Parks, and James Parks, are held and firmly bound unto John Goodman and Yancey S. Bledsoe, as common school commissioners in the eighth civil district of Polk county, Tennessee, in the penal sum of fifty thousand dollars, to be well and truly paid unto them or their successors in office, for which payment we bind our heirs and assignees, as witness our hands and seals this fourteenth day of November, 1856.

The condition of the above obligation is such, that whereas the above named Goodman and Bledsoe, as common school commis-

sioners aforesaid, did exhibit their certain bill of complaint in chancery, in the chancery court, at Benton, Tennessee, in February, 1856, against the aforesaid Tennessee Mining Company, and others therein named, and praying as in said bill is prayed, and, among other things, for an injunction to issue, restraining said company from working the mine of copper in the 16th section, township four south, range five east, of the basis line, Ocoee district, Polk county, Tennessee; and whereas such proceedings were had in said cause, that at August term, 1856, it was ordered by said chancery court, that unless the said Tennessee Mining Company, on or before the 15th November, 1856, give a bond with sureties in the sum of fifty thousand dollars, that they will account for the net proceeds or value of all ores raised from said mines and sold by them after the said 15th day of November, 1856, if so ordered by the said court on final decree; then, if the said Tennessee Mining Company shall account for all ores raised by them from the 15th November, 1856, and pay over the net proceeds as ordered by said court on final decree, if ordered to be paid over, then this obligation to be null and void, otherwise to remain in full force and virtue.

TENNESSEE MINING COMPANY,
SAMUEL CONGDON, *Sup't.* [L. S.]
SAMUEL CONGDON, [L. S.]
SAMUEL PERKS, [L. S.]
JAMES PERKS, [L. S.]
JAMES GAMBLE. [L. S.]

Tuesday morning, Aug. 5th, 1856.

Court was called 8 o'clock, pursuant to adjournment. Present and presiding, his honor T. Nixon Van Dyke, chancellor, &c.

JOHN GOODMAN and Y. C. BLEDSOE, Common School, Com'rs,
vs.
JOHN CALDWELL.

On motion of respondents' solicitor, time is given them to file their answer until the 15th of November, 1856, so as not to delay the hearing.

Tuesday, August 5th, 1856.

JOHN GOODMAN, YANCY S. BLEDSOE, Common School Commissioners,
vs.
THE TENNESSEE MINING CO., SAMUEL CONGDON, and others.

In this cause, from sufficient cause disclosed to the chancellor, from the affidavits of complainants, as well as the original bill, it

is ordered by the court that injunction heretofore granted be reinstated, to take effect from and after the 15th day of November next, to continue in full force, unless or until the said defendants enter into a bond and security before the clerk and master of this court, in the penal sum of fifty thousand dollars, conditioned as required by the fiat granted by the Honorable John C. Gant in this cause; and, on motion of complainants' solicitors, leave is given them to amend their bill against the October rules next.

Tuesday, February 3d, 1857.

Court met pursuant to adjournment. Present and presiding, his honor T. Nixon Van Dyke.

COMMON SCHOOL COM'S
vs.
TENNESSEE MINING CO. et als.

This cause is remanded to the rules to take proof generally.

Wednesday, 4th February, 1857.

Court met pursuant to adjournment. Present and presiding, his honor Chancellor Van Dyke.

COMMON SCHOOL COM'S
vs.
TENNESSEE MINING Co. et als.

On motion of complainants' sol., and by consent of parties, notice to take depositions, if served on Geo. W. Rowles, sol. for respondents, shall be treated as notice to all the respondents; and that notice served on R. M. Edwards, sol. for complainants, shall be treated as notice to all the complainants.

August term, 1857. Monday, 3d day of August, 1857.

Court met pursuant to adjournment. Present and presiding, his honor T. Nixon Van Dyke, chancellor.

GOODMAN AND BLEDSOE, Com. School Com.,
vs.
TENNESSEE MINING Co. et als.

This cause is continued by consent, and remanded to the rules to take proof generally.

February Term, 1858.

On the 1st day of February, there being no chancellor present, court was opened and adjourned until the 4th day by the clerk and master, and adjourned until court in course.

Rule Docket.

JOHN GOODMAN and Y. S. BLEDSOE
vs.
JOHN CALDWELL, JAMES V. SYMONS, and others.

Original and in. bill filed 13th Feb'y, 1856.
Amended bill filed 5th Aug., 1856.
Publication made in the Cleveland Banner, May 19th, 1856.
Sub. and copy of bill to Polk, 19th May, 1856.
Sub. and copy to Bradley, 26th day of May, 1856.
1 copy and subp. to McMinn, at the request of John Caldwell.
Sub. to Polk returned exd., 27th May, 1856, Po., 9 cts.
" Bradley " 23 June, "
Sub. and copy amended bill iss'd to Polk, 15 Sept., 1856; returned 24th Sept., 1856, ex.
One subp. and 2 copies of the original, and 2 two copies of amended bill, Oct. 13, 1856 to Monroe, Po., 21 cts.
One sub. and one copy of the original bill, and one of the amended bill, to Knox county, Oct. 15, 1856, Po., 15.
One subp. and two copies of amended bill to Bradley, Oct. 13, 1856, Po., 12 cents.
One subp. and copy of amended bill to Jefferson, Oct. 13, 1856, Po., 6; sub. to Knox county, ex'd, Oct. 17, 1856.
Inj. bond in 50,000 given 14th Nov'r, 1856, S. Congdon, Jas. Gamble, Sam'l Parks and James Parks, sec.
Ans. of S. Congdon, filed 10 Nov., 1856.
" of Tenn. Mining Co., 10 " "
" John Caldwell, filed 14 " "
Answer of T. C Lyon and John B. Tipton, filed 14 Nov., 1856.
E. Waterhouse and T. H. Callaway, " "
Ans. of S. M. Johnston, filed Feb'y 2, 1857.
Notice to R. M. Edwards, " 18th Nov., 1856.
Republication in Cleveland Banner, Dec. 7, 1856.
Sub. to Jefferson not ex'd January 7, 1857.
Feb'y term, 1858, court by consent and remanded to the rules generally.
Record from the chancery court at Athens, Tennessee, filed 22d January 22*nd*, 1857, by respondents; this cause this 4th August, 1858.
Exceptions filed to the above record by complainants' solicitor, August 4, 1858.
There was filed by the respondents on the 22 day of January, 1857, in this cause, a transcript of record from the chancery court at Athens, to wit:

CALDWELL & SYMONS vs. DUGGER, DENTON et al.; And THOMAS H. CALLAWAY et al. vs. CALDWELL & SYMONS et al.	Bill and Amended Bill. Cross-Bill.

But the fact of its filing was not placed on the rule docket, but is now for then ordered to be placed on the rule docket by the chancellor, this 4th day of August, 1858.

J. H. ALEXANDER, *C. & M.*

Wednesday, Aug. 4th, 1858.

Court met in pursuant to adjournment; present and presiding the Hon. T. Nixon Van Dyke, chancellor, &c.

JOHN GOODMAN, YANCEY S. BLEDSOE, as School Commissioners of the eighth civil district of Polk county, Tennessee,

vs.

JOHN CALDWELL, JAMES V. SYMONS, Thomas H. Callaway, Euclid Waterhouse, Samuel Congdon, Charles Congdon, Tennessee Mining Com., and Thomas C. Lyon and others.

Be it remembered, that this cause came on to be heard and determined this 5th August, 1858, before Chancellor Van Dyke, on bill, answers, pleadings, proof, and exhibits, in the cause; and the chancellor being satisfied that the 16 section of township four south, in rage five east, of the basis line, in the Ocoee district, Polk co., Tennessee, was laid off as common school land under provisions of law, to that effect; it further appearing that an election had been opened and held in said township, as required by law, to ascertain the sense of a majority of the qualified voters of said township, in relation to the sale of said land, and a majority of the said voters having failed to vote for or against said sale, and such fact being communicated to the county court of Polk, they appointed one Wm. S. Conner as special commissioner, as provided by law, to go round in said township and take the sense of the qualified voters of said township as to the sale or not of said school land; and it appearing that at the February term, 1850, of the circuit court of said county of Polk, said Conner returned into open court his return of the sense of said voters in that behalf, and was then and there sworn and examined in court as required by law, as to the manner in which he had discharged said duties, and verified his report as required by law; and it further appearing that

said court ordered, adjudged, that said land be sold as prescribed by law; and it further appearing that the county court of Polk appointed Henry *Besker*, Johnston Suit, and John Kirby, commissioners to value said land before the sale of the same, and they were valued at the sum of four hundred and twenty dollars; and in the month of May, 1850, the then common school commissioners made a lease of said lands for the term of ninety-nine years for mining purposes, reserving seven per cent. of the net proceeds made from or that might be realized from said contemplated mining operations; and it appearing that the land being about to be sold under the decree of circuit court, and advertised for sale on the 26th of July, 1850, said advertisement making no mention of any reservation, on account of the aforesaid lease so made after the land had been ordered to be sold; and it appearing, on the application of John Cardwell and James V. Symons, in that behalf, *an* bill filed in the chancery court at Athens, Tennessee, against the then common school commissioners, to set up said lease, an injunction was awarded, enjoining the clerk from selling said land under the decree of the court, so as to interfere with the rights under said lease; and it appearing that said land was sold on the 26th day of July, 1850, with a reserve made by said clerk of any interest that may have accrued to said lessees, under said lease, and also said clerk made said sale with a reservative, made at the request of the then common school commissioners, of the profits arising from said lease to the said township, for which they were commissioners.

It appears said land, with the reservation above mentioned, if they may be so termed, sold for seventeen hundred and seventy dollars, and Euclid Waterhouse, Thomas C. Lyon, Thomas H. Callaway, John B. Tipton, and Samuel M. Johnston became the purchasers.

And it further appearing that the said clerk made his report at the October term, 1852, of the circuit court of Polk county, Tennessee, the clerk made it appearing from said report that an injunction had been served on the clerk, and the court being unadvised of its extent, further action was suspended on said report until the further order of the court; and it appearing that at the October term, 1852, of said circuit court, having evidence from a certified transcript of the aforesaid chancery bill at Athens, that the complainants had dismissed their bill, and the injunction was dissolved, the report of clerk of his sale of the school lands being unexcepted to, was in all things confirmed, and it was further declared, that the parties stand in the attitude as though the injunction had never issued.

And it further appearing, that the aforesaid lessees sold all their interest under said lease *under* on the 9th day of June, 1851, to Samuel Congdon, as agent of Charles Congdon and associates, and

it appearing that the purchasers under the sale the land before mentioned sold all their interest under said purchase to said Charles Congdon, and that he, said Congdon, having paid up the amount of the purchase money and interest due thereon to the State or township for said land, a grant issued from the State of Tennessee therefor on the 20th of February, 1853.

And it further appearing that said Congdon, on the 22d November, 1853, conveyed all his interest, as assignee of the aforesaid lease, to the Tennessee Mining Company.

And it also appearing, that on the 22d of September, 1853, conveyance by his deed in fee simple, with general warranty, to the said corporation, said common school lands for the valuable consideration of fifty thousand dollars.

And it further appears all said purchases and conveyances were made, and money paid, without any notice of the alleged fraud set up in the bill, but *bono fido*.

The chancellor is therefore of opinion, on the foregoing branch of the case, that complainants are not entitled to have said sale of the common school lands set aside, because he is of opinion that though there may have been irregularities in the sale of the land, the sale was made by the judgment—was made by a court of competent jurisdiction; said judgment has remained unappealed from and unreserved for more than three years before the filing of complainants' bill, and that is now *to* late to impeach the proceedings under which the decree of sale was had; and he is further of opinion, if this were not, that in the hands of the Tennessee Mining Company, the present owner, said sale of the lands must stand as legal and valid.

And he is also of opinion that the said lease is valid; and if not originally so, ought not now, under the circumstances, to be effected to the prejudice of complainants by declaring the same null and void.

The chancellor is therefore of opinion that complainants are entitled to no relief against respondents, and that the bill should be and is dismissed as to all the matters wherein relief is sought, except to an account of what may have been due, if anything, or may now be due on account of the seven per cent. of the net proceeds of the profits under the aforementioned lease; and the chancellor being of opinion that this is a fit and proper case for an account upon the matters connected with the operations of the respondents under said lease, it is ordered that this cause be referred to the master to take and state an account, and show what amount of ores and minerals have been taken from said property since the date of said lease, when and where sold, and its value, and what amount of money has been received by said Tennessee Mining Company from the sale of ores taken from said property, and when received, and what amount is due said company from the sale of said ores

and minerals taken from said property, and from whom, and when done.

2d. What has been the reasonable cost of raising and transporting and selling said ores and minerals.

3d. What amount of money, realized by said company from the sale of ores and minerals taken from said property, has been expended in subscription for stock, in any road or roads, in building any roads, and also report upon what roads the same has been expended.

4th. What amount of said moneys so realized has been expended in sinking shafts and testing upon the said property, and when so expended, and to whom paid.

5th. What amount of ores and minerals still remain, and how unsold, and the value thereof.

6th. What other expenditures have been incurred by said company in making said mine; when, *have* and to whom paid.

7th. What amount has been paid by said company to the school commissioners of said township, and when paid.

All questions of law arising upon the matters herein referred are reserved until the coming in of said report, and respondents are required to file with the master before the time of taking said account all books and papers in their possession in relation to their operations upon said lands, and are ordered to appear before the master, either at his own instance or at the instance of complainants, and answer upon interrogation before the master upon the taking of said accounts, and that he report hereof to the next term of this court, and the question of cost is reserved.

From which opinion of the chancellor, in rendering the foregoing decree, and in denying them the relief prayed for, the complainants, by their solicitors, pray an appeal to the next term of the supreme court, to be held at Knoxville on the 2d Monday of September next, which to them is granted; the chancellor being of opinion that the principal matters have been determined by the decree, and they having given bond and security as required by law; and from which decree of the chancellor, and the directions for taking the account, the Tennessee Mining Company prays an appeal also, which appeal is granted, said complainants having entered into bond and security as required by law.

Appeal Bond.

We, John Goodman and Yancy Bledsoe and S. B. Boyd, are held and firmly bound unto the Tennessee Mining Company, Samuel Congdon and others, in the penal sum of two hundred and fifty dollars, for the payment of which well and truly to be made we bind ourselves, our heirs and representatives, &c., but to be void on condition that the said Goodman and Bledsoe will with effect prosecute an appeal which they, as common school commis-

sioners of the 8th civil district for Polk county, Tennessee, have this day prayed to the supreme court of the State of Tennessee, from a decree of the chancery court at Benton, Polk county, Tennessee, in the case of John Goodman and Yancey S. Bledsoe, common school commissioners, &c., against the Tennessee Mining Company, Samuel Congdon and others; or in case of failure, pay and satisfy all such costs and damages as shall be awarded against them by said supreme court, by reason of their failure to successfully prosecute said appeal.

Given under our hands and seals this 5th day of August, 1858.

JOHN GOODMAN, [SEAL.]
By Sol., J. B. COOK.

YANCY S. BLEDSOE, [SEAL.]
By Sol., J. B. COOK.

S. B. BOYD. [SEAL.]

I, J. H. Alexander, clerk and master of the chancery court at Benton, Polk county, Tenn., do hereby certify that the foregoing is a true and perfect copy of the bond now on file in my office.

Given under my hand, at office, this 12th day of January, 1859.

J. H. ALEXANDER,
Clerk and Master.

Goodman and Bledsoe, as Common School Com'rs, &c. Tennessee Mining Company et als.

Know all men by these presents that we, the Tennessee Mining Company and Julius E. Raht, are held and firmly bound unto John Goodman and Yancy Bledsoe, common school commissioners for the 8th civil district of Polk county, in the penal sum of two hundred and fifty dollars, to the payment of which well and truly to be made we bind ourselves, our heirs, &c., but to be void on condition the said Tennessee Mining Company shall successfully prosecute an appeal which has been this day prayed and granted to the next term of the supreme court of Tennessee, to be held at Knoxville on the 2d Monday of September next, from the decree of the chancellor and the directions taking an account in this cause, or in case of failure pay and satisfy all such costs and damages as may be adjudged against them.

THE TENNESSEE MINING CO., [SEAL.]
By G. W. ROWLES, *Att.*

J. E. RAHT. [SEAL.]

August 5th, 1858.

I, J. H. Alexander, clerk and master of the chancery court at Benton, Polk county, Tennessee, do hereby certify that the foregoing is a true and perfect copy of the bond now on file in my office.

Given under my hand, at office in Benton, this 12th day of January, 1859.

J. H. ALEXANDER, *C. and M.*

Bill of Costs.

GOODMAN and BLEDSOE, School Com's, vs. TENNESSEE MINING Co. et al.

State tax, 3 75; C. and M. filing two bills, 50; filing seven ans., 1 75; one aff. to ans., 25; six bonds, 3 00; eight subp's to ans., 6 00; seven copies of bill, 33 25; seven copies of amended bill, 12 25; two orders for publication, 1 00; postage, 45; four cert., 1 00; one aff., 25; set cause for trial, 10; certificate, 50; two com., 2 00; one notice, 25; circuit court clerk, J. Smith, transcript, 2 00; this bill of costs, 50; certificate, 50; transcript 65, 250 words, 65 25		132 80
Editor of the Cleveland Banner, two pub		4 00
Register Fleming		5 62
Sh'ff Hancock, one sub. and copy		2 00
" McLead, " " "		2 00
" Vaughn, two " two		4 00
" Crippin, one " two		3 00
" Province, not ex'd		50
Const. Freeman, 16 sub		4 00
" B. Mann, 16 dep., 16; subp., 1 60		17 60
Wit. A. McBee, 1 day		75
" Wm. Mills,		75
" M. R. Denton, 1 "		75
" B. C. Dugger, 1 "		75
" J. A. Davis, 2 "		1 50
" John Rodgers, 1 "		75
" John Dunn, 1 "		75
" Wilson Abercrombie, 1 "		75
" J. H. Leming, 1 "		75
" Wm. Kimsey, 1 "		75
" T. J. Kimsey, 1 "		75
" W. J. Harbin, 2 "		1 50
" S. McJenkin, 2 "		1 50
" E. Davis, 2 days		1 50
" W. S. Conner, 2 days		1 50
" S. Denton, 2 "		1 50
Postage to Knoxville		1 29
Whole amount		197 06

I, J. H. Alexander, clerk and master of the chancery court at Benton, Polk county, Tennessee, do certify that the foregoing is a true and perfect transcript of the papers now on file in my office, in Benton, and that the above is a true copy of the bill of costs in the foregoing case.

Given under my hand, at office in Benton, Dec. 8th, 1858.

J. H. ALEXANDER, *C. and M.*

Decree of Supreme Court.

JOHN GOODMAN and YANCEY S. BLEDSOE, Common School Commissioners,
vs.
JOHN CALDWELL, THOMAS H. CALLAWAY, Euclid Waterhouse, Samuel Congdon, Samuel M. Johnston, John B. Tipton, The Tennessee Mining Company, and others.

Be it remembered, that on this 21st day of October, in the year 1858, this cause came on to be heard, upon the transcript of the record from the chancery court at Benton, Tennessee, before the Hon. Robert J. McKinney, Robert L. Caruthers, and Archibald Wright, judges of the supreme court of Tennessee, presiding, at Knoxville, and the record having been read and argument of counsel heard, it is considered by the court that the decree pronounced in this cause in said chancery court be reversed; and it appearing to the court that at the February term, 1850, of the circuit court of Polk county, Tennessee, an order was made by said court to sell the school land in fractional township four south, range five east, of the basis line, in the Ocoee district, Polk county, Tennessee, to wit, the sixteenth section of said township:

And it further appearing to the court that the said John Caldwell and James V. Symons, on the 21st day of May, 1850, obtained a lease on the aforesaid school section from the then acting school commissioners in and for said township, to mine for copper and other valuable ores for the term of ninety-nine years:

And it further appearing to the court, that before the day fixed by the clerk of the said circuit court, at Benton, for the sale of said school land, the said John Caldwell and James V. Symons filed their injunction bill in the chancery court at Athens, Tennessee, against the clerk of the circuit court at Benton aforesaid, and that the said clerk was, by the fiat of the Hon. Charles F. Keith, enjoined from selling or interfering in any way with the said lease to the said Caldwell and Symons; which said injunction was issued and served on said clerk before the sale of the said school land:

And it further appearing to the court, that on the 26th day of July, 1850, the clerk of said circuit court at Benton, after first

reading said lease and injunction publicly to the bidders and others present at said sale, and notifying them that said lease was reserved, proceeded to sell said school land, reserving whatever interest the said lessees had acquired under said lease, when Euclid Waterhouse, Thomas H. Callaway, Thomas C. Lyon, Samuel M. Johnston, and John B. Tipton became the purchasers of said school land; all of which was reported to the said circuit court by the clerk of said court. And at the October term of the said circuit court, 1852, the report of the said clerk of the sale of the school land not being excepted to, was confirmed by the said circuit court, as if no injunction had ever issued or been granted—said injunction bill having been in the mean time dismissed, on compromise of the parties thereto:

And it further appearing to the court, that the said John Caldwell and James V. Symons, on the 9th day of June, 1851, conveyed their entire interest in and to the said lease to the said Samuel Congdon, agent of Charles Congdon and associates, and on the 22d day of November, 1852, the said Charles Congdon transferred said lease to the said Tennessee Mining Company:

And it also appearing to the court that the said Euclid Waterhouse, Thomas H. Callaway, Samuel M. Johnston, Thomas C. Lyon, and John B. Tipton transferred their certificate of purchase, without any warranty of title, to the said Charles Congdon, and that a grant issued to the said Charles Congdon on the 28th of February, 1853, from the State of Tennessee, for such interest as the said purchasers acquired by said purchase in and to the aforesaid section of school land; and afterwards, to wit, on the 20th day of September, 1853, the said Charles Congdon conveyed the aforesaid lands to the Tennessee Mining Company:

The court is of the opinion, and so declares, that the said lease made by the said school commissioners to the said John Caldwell and James V. Symons was void, and conveyed no interest in said school land to the said Caldwell and Symons.

The court is also of the opinion, and so declares, that the sale and purchase of the said school land by the said Euclid Waterhouse, Thomas H. Callaway, Samuel M. Johnston, John B. Tipton and Thomas C. Lyon, was void, and the said purchasers took nothing by virtue of the same.

And the court is also of opinion, that the Tennessee Mining Company is not an innocent purchaser of the said school land, without notice of the defect of the title to the same.

The court is also of the opinion, and so declares, that the State of Tennessee had no interest in the aforesaid school land, except as trustee for the benefit of common schools of the aforesaid township; and that said grant is void, and communicates no title to the said Charles Congdon or the said Tennessee Mining Company.

The court is therefore pleased to order, adjudge, and decree that

the title to the aforesaid school land be divested out of the said Tennessee Mining Company, and be vested in the State of Tennessee, in trust for the benefit of the common schools of the aforesaid township, to be held in all things in the same manner as though no lease or sale had been made.

And it further appearing to the court, that the said Charles Congdon and the Tennessee Mining Company have been in the possession of the said school land, and have been mining and taking out copper ore, and shipping the same to market, and cutting the timber off of said land, and that said Charles Congdon and associates, and the Tennessee Mining Company, have made some valuable improvements upon said land:

The court is of opinion, and so declares, that the said Charles Congdon and associates, and the Tennessee Mining Company, held the said school land and mined the same in the character of trustees for the benefit of the common schools of said township. And the court being of the opinion that the commissioners of said common schools are entitled to elect whether they will take an account of the actual profits of said mine, or for the reasonable rent of the same—

It is therefore ordered, adjudged, and decreed that Hon. L. McClung be appointed a commissioner to take an account of the business of the said mine, from the time of the purchase by the said Congdon, stating the same in a double aspect—that is to say, he shall report the net profits of the said mine, with interest on the yearly balances; to ascertain which, the said Charles Congdon and the Tennessee Mining Company shall be charged with all the income in any way derived from said land and mines, and credited with all reasonable and proper expenditures in the testing, working, management of said mines, and the disposition of the products. He shall also and separately ascertain what improvements and erections have been made, and the costs thereof, and to what extent they have improved its value as mining property; which shall be allowed the defendants, provided it does not exceed the costs of such improvements or erections.

Secondly. He shall report what would be the reasonable rent of said land and mines, either rented for cash or reserving a per centage of the gross proceeds, including interest on the yearly balances, and crediting the defendants with the present value of improvements put upon the land by the defendants, which add permanent value to the lands as mining property—such credit not, in any instance, to exceed the actual cost of the same, and with such allowance for deterioration as may be reasonable.

Third. What amount of purchase money has been paid by respondents on the original sale of the 26th of July, 1850, with interest on the amount paid, and what amount of rents have been paid by said respondents, or either of them, for said land and mine

since it went into their possession, with interest from the time of payments. Complainants shall, upon confirmation of the report, and under the direction of the court, elect which mode of taking the account they will abide by.

In consideration of the importance of the fund in this case the chancery court is directed to make such order as may be necessary to secure the same, by having it vested in State bonds, or deposited in the Bank of Tennessee, to the end that the general assembly of the State may take such order as may be proper for the management of the same.

The commissioner shall report upon any other matter that either party may require that may be necessary to the attainment of the justice of the case.

If any balance be found to be due the defendants upon the amount, as herein before ordered, it shall be a lien upon the property.

It is further ordered that all the costs in this cause in the chancery court, and in this court, be paid by the defendants out of the trust funds in their hands, for which they will be allowed a credit in the account. This cause shall be remanded to the chancery court at Benton.

Opinion of the Supreme Court, at Knoxville, October 21st, 1858.

GOODMAN & BLEDSOE
vs.
THE TENNESSEE MINING COMPANY and others.

The complainants are the common school commissioners of the 8th civil district of Polk county, and in that character filed this bill on the 13th Feb'y, 1856, to impeach and set aside a lease for ninety-nine years, made by their predecessors, of the common school section of land in that district, as well as a sale made of the same under the order of the circuit court of that county, by virtue of both of which the defendants claim title.

The land is poor and broken, and almost worthless for purposes of cultivation, but has become of immense value on account of the discovery of copper ore upon it. These mines have been developed, and are now worked with great profit, by the defendants. The property is supposed to be now worth several hundred thousand dollars, perhaps half a million. The veins of copper ore upon it are exceedingly rich, and regarded almost inexhaustible. In immediate proximity, if not upon the land, discoveries had been made before the lease or sale, and the surface indications were such as to leave but little, if any, doubt that it was a prize worth contending for; consequently schemes were ingeniously set on foot and carried

out to obtain title to it. It could hardly be expected under such circumstances that the watchfulness and care of uninterested commissioners would be much protection to a treasure so attracting against the avidity of *of* speculators. The deep interest of the infants of the present and future generations in these mines of wealth was not sufficient to excite their trustees to that degree of vigilance in their trust which was necessary to resist the schemes and machinations of those who were in eager pursuit of the glittering prize.

But the question now is, whether the present complainants, who have succeeded to the trust, can reclaim the lost treasure. They must depend upon the law of the case operating upon the facts which have transpired.

The territory which composes the State of Tennessee was ceded to the general government by the State of North Carolina upon certain conditions specified in the deed of cession, and accepted by Congress in 1789. One of these was that a certain portion of the lands should be set apart for educational purposes. Congress, by act of 1806, ch. 31, ceded to Tennessee all the unappropriated land north and east of a certain line there established, and afterwards called the "Crongressional reservation line," because all the lands on the south and west were reserved from entry and *exemt* from any claim by Tennessee. The lands ceded embraced all East Tennessee and a large portion of the middle division of the State. But this cession was upon the express condition, that 100,000 acres should be set apart for colleges, and the same quantity for academies, and also 640 acres in every six miles square, or one section in each township, "for the use of schools for the instruction of children forever." The legal title passed to the State with the positive restriction that one section should be laid off and held for schools. The right vested in the State as a corporation, coupled with a trust. In Lowry vs. Francis, 2 Yerg., 534, '41, it was held that these lands could not be sold, and that the various acts authorizing that to be done were unconstitutional, being in violation of the compact with the general government of 1806, by which they were to be held by the State for the "instruction of children forever." This case settled that the State was only a trustee in relation to these lands, bound by the restrictions of the act of Congress, and that the children of the respective townships were the beneficiaries. In Perkins & Chilcutt vs. Reeds, 1 Swann, 87, it was held, "that both the State and commissioners are mere trustees for the common schools of the township."

Congress, however, by the act of 1843, ch. 346, authorized the State to convert the schools by sale, provided the consent of the inhabitants should be first obtained. By the 2 sec. of this act, if the legislature should deem it inexpedient to sell, provision might be made for leasing for any term "not exceeding four years."

Our legislature, by act of 1844, ch. 104, amended by that of

1846, ch. 121, made provision for the sale of the common school lands in pursuance of the power given by the act of Congress of 1843, above cited. A vote of the people is to be taken upon the question of selling, and if a majority fail to vote, a commissioner may be appointed by the county court to ascertain the will of the people by personal application to each voter for his signature to a paper properly headed for that purpose, and if it appears by either mode that a majority of the qualified voters of the township are in favor of the sale, that fact is to be certified to the circuit court, and it is made the duty of the judge to order a sale on terms prescribed. Before the sale is made the lands to be valued, and not to go for less. By a proceeding under these acts the land in question was sold on the 25th July, 1850, by the clerk, to Euclid Waterhouse and others, for $1,770, that being the highest and best bid. It was certified to the circuit court of Polk county at its Feb. term, 1850, that it was ascertained by the report of a commissioner appointed for that purpose, that a majority of the voters were in favor of the sale, and the order to sell was then made. The sale not having been made for some reason, the order was renewed at the same term, and executed on the 25th July, 1850, as stated. On the 4th of February, 1850, before the order of sale by the court, but after the vote of the people, the legislature enacted, ch. 181, s. 5, that the com. school com. of "Polk county" should have power to lease for mining purposes any unsold school lands on such terms as in their judgment would be most conducive to the interest of their common schools. In May, after the decree for this sale, in the preceding February, the commissioners made a lease of this land to Caldwell & Symons for ninety-nine years, in the supposed pursuance of the power given them by this last act; whereupon these lessees filed a bill in the chancery court to enjoin the sale under the order of the circuit court, and the injunction was granted, so far as such sale might or could affect their lease. On the day of sale this lease and injunction were read to the people, and the land sold upon that notice. These facts were all reported to the court, and no exceptions being made, the report was confirmed at the October term, 1850.

Soon after this the purchasers sold the land at a large advance, and assigned their certificate of purchase to Charles Congdon and associates, of New York, through their agent, Samuel Congdon, there upon the ground, and having full knowledge of all the facts. The said Charles Congdon having paid the original purchase money, $1,770, and holding the certificate of purchase by assignment, obtained a grant from the State on the 23d Feb., 1853. The first purchasers made no warranty of title, notwithstanding the large advance made on their bid by Congdon. The bills and cross-bills, between the lessees and purchasers, were all compromised and settled by the purchase of the lease by Congdon.

Having thus concentrated in himself both titles, an act of incorporation was procured from the legislature, and the property passed over to the "Tennessee Mining Company," consisting of the said Charles Congdon and some other stockholders, by whom it has been put into successful mining operation, and is now and has for several years been worked on a large and profitable scale as one of the celebrated "Ducktown copper mines."

Two preliminary objections are made to the relief sought in the bill:

First, that this is a bill of review, and consequently is barred by the lapse of three years from the confirmation of the sale in the circuit court. We do not consider it a bill of that character. Its object is to impeach and set aside the proceeding entirely, and not to review and correct it. It assumes that the sale was not only erroneous, but void. The jurisdiction given to the circuit court in the case, is not so much judicial as ministerial. There are no pleadings, no questions for adjudication, no power to decide upon the *property* of selling or the terms of sale, or even the minimum to be fixed; all this is done under the statutes by other machinery. It is more like the jurisdiction to condemn land to be sold for taxes, upon the report of a collector, than a suit. If it be certified to him that the sense of the people has been ascertained in either of the modes prescribed, and that a majority are for the sale, it is made the duty of the circuit judge to order it without question, and confirmation would be a matter of course, unless something should have occurred in making it that would render it improper. He is not even required to pass the title by decree that goes by the certificate of purchase, upon which a grant is to be issued when the considerations paid. Such are the provisions of the statutes referred to. The legality of the sale must depend upon the circumstances attending it, and the conformity of the previous steps to the requirements of the statutes. The circuit judge would doubtless have power to set aside the sale, for good cause; but a failure to do so does not close the question, as an adjudication, as in ordinary suits, unless opened by a bill of review, or other prescribed mode of proceeding in the regular practice. The validity of the title procured must still depend upon the facts of the case.

Second. It is contended that the grant of the State closes all questions, and cures every imperfection in the anterior proceedings, and is conclusive upon the title. It is a general rule, that the State's grant of her own lands cannot be questioned upon any matter behind it, by any one whose interest or claim originated subsequently. But a grant may be set aside in favor of an older special entry, upon which a younger grant has issued. Here there was an older claim; the land had been legally set apart for common schools, and vested in commissioners for that purpose. And besides, this land did not belong to the State, but was only

held in trust. There are two grounds, thereupon which this case is distinguished from those to which the rule referred to applies.

These difficulties being out of the way, the case is open to investigation upon its merits. And the questions presented are, whether the sale under the order of the circuit court was good in law, and sufficient to pass the title; and if not, whether the lease was valid and binding upon the complainants.

1. As to the sale. Various objections are made in the bill, and perhaps sustained by the proof, in relation to the mode and manner of obtaining the sense of the people on the question of sale, and to the qualification of the voters. We need not now determine whether these can be examined, as they preceded the order of sale; but a reference to them is enough to excite strong suspicion that all was not fair, and that much undue influence and exertion was used to divert this bounty of the general government from the laudable purposes designed, and appropriate it to individual uses. It appears that men were employed to canvass the district for the purpose of making public and private speeches, to convince and persuade the people to vote for the sale. But independent of this, enough appears to render the sale, and the title derived from it, null and void. There was no law authorizing the sale of school lands already leased. It is no sufficient answer to this objection that the lease was invalid, if such was the fact. A court of chancery had so far recognised it as to enjoin the sale. True, the circuit court had ordered the sale in February, but in May the commissioners had so far changed their purpose as to grant a long lease, and the chancellor had forbidden the sale upon that ground. If the clerk of the circuit court, under these circumstances, went through the forms of a sale, it was nothing more than a form, and could have no effect upon the title so as to change it. It was a fraud upon unborn infants, and cannot be allowed to deprive them of their rich inheritance. The purchasers, with full knowledge of these facts, could claim nothing by their purchase, nor transmit any right to others by a transfer of the certificate of purchase. There is no pretence, but that these facts were all well known to the Congdons at the time of their purchase, and that this knowledge would equally affect them and their associates, as corporators as well as individuals. It was a flagrant breach of trust on the part of all concerned, and cannot be permitted to stand. That the circuit judge would confirm a sale made under such circumstances, can only be accounted for on the ground that it was regarded as a matter-of-course, uncontested proceeding, to which his attention was not directed.

But after a brief contest in the chancery court between the lessees and purchasers, in which each impeach and declare void the claim of the other, they fall into a harmonious arrangement by which the lease is sold and transferred to the purchasers, and the two claims are united in "Congdon and associates," and pass to

the new corporation called the "Tennessee Mining Company." So it is contended, that if their title is not in fee under the sale and purchase, it is good for 99 years, under the lease. This position we consider equally unavailing, and less plausible than the other.

It is true, that by the act of Feb. 4, 1850, ch. 181, sec. 5, the legislature authorized the commissioners to lease for mining purposes any "unsold" school land in Polk county, and that this land was then unsold. But the defendants assume, that all the power of the people at the instance of the commissioners had thus been exerted under the acts of 1844 and 1846, in favor of a sale, and that the same was conclusively and legally settled, nothing remaining to be done but to carry out the will of the inhabitants of the district, by a matter-of-course order of the circuit court, and a formal sale by its clerk. Could the act be construed to apply to such a case? Was it intended to set aside the decision of the people in favor of a sale upon the judgment of the commissioners in favor of the policy of leasing? It is a little suspicious that the legislature should have thought it proper to change the general policy settled in 1844 and 1846 in relation to sale of the common school lands, and passed this special and pointed act in relation to leasing at that particular time; and still more, though, that these commissioners should have changed their views so suddenly, and adopted a course directly in conflict with the will of the people so recently expressed upon their motion; but all that is immaterial. They had no power to make such a lease, under any law. Waiving the objections just stated, based upon the assumptions of the defendants in support of their title under the sale, the lease is void for want of authority of law. The act of Congress of 1843, ch. 346, did, in case the legislature should deem it inexpedient to sell, authorize provision to be made for leasing for any term "not exceeding four years." One act of Feb., 1850, authorizes the lease, but prescribes no time. The legislature acting under a trust, would be bound by its restrictions, and could not disregard them. But that is not attempted by the act, but only by the commissioners. The lease, then, for 99 years, being in contravention of the act of Congress, is void, and confers no rights upon the defendants.

The result of the whole case is, that the title is still in the complainants, as common school commissioners, for the benefit of the children of district No. 8 of Polk county, "forever," and that the defendants will be held to account for all the net profits made by them out of the said mines, or as rentors, at the option of complainants, the election to be made after the taking of the account in both aspects. A decree will be drawn up to this effect, and the case remanded to the chancery court for the stating of the account and final proceedings.

CARUTHERS.

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Bill of Costs.

JOHN GOODMAN and Y. S. BLEDSOE, Common School Commissioners,
vs.
THE TENNESSEE MINING COMPANY, SAMUEL CONGDON and J. E. RAHT, (their Sc't'y.)

C. & M. Alexander, State tax	.....	$3 75
Filing 2 bills, 50; filing 7 answers, 1 75	$2 25	
1 aff. to answer, 25; six bonds, 3 00	3 25	
8 subs. to answer, 6 00; 7 copies of bill, 33 25	39 25	
7 copies of amended bill, 12 25	12 25	
2 orders for publication, 50 c. each, 1 00; postage, 45; four cont., 1 00	2 45	
1 aff., 25; set cause for trial, 10; certificate, 50	85	
2 com., 2 00; notice, 25; circuit court clerk	2 25	
Smith transcript, 2 00; bill of cost, 50	2 50	
Certificate, 50; transcript 65, 250 words, 65 25	65 75	
		130 80
Editor Cleveland Banner, 2 pub		4 00
Register Fleming		5 62
Sh'ff Hancock, 1 sub. and copy		2 00
" M'Leod, 1 " " "		2 00
" Vaughn, 2 " " "		4 00
" Crippin, 1 " " 2 "		3 00
" Province, not. ed		50
Const. Freeman, 16 sub		4 00
Com'r B. Mann, 16 dep's and 16 subp's, 1 60		17 60
Wit's: A. McBee, 1 day, 75; Wm. Mills, 1 day, 75; M. R. Denton, 1 day, 75		2 25
B. C. Dugger, 1 day, 75; J. A. Davis, 2 days, 1 50		2 25
John Rodgers, 1 day, 75; John Dunn, 1 day, 75		1 50
Willson Abercrombie, 1 day, 75; J. H. Leming, 1 day, 75		1 50
Wm. Kinsey, 1 day; T. G. Kinsey, 1 day; 75 ea		1 50
W. J. Harbin, 2 days, 1 50; S. M. Jenkin, 2 do., 1 50		3 00
E. Davis, 2 days, 1 50; W. S. Conner, 2 days, 1 50		3 00
S. Denton, 2 do., 1 50; postage to Knoxville, 1 29		2 75
		$195 06

Costs in Supreme Court.

Cl'k Nelson, State tax	.....	3 50
Final judgment, 75; receive and file record, 75; docket cause, 25: 6 orders of court, 25 ea., 1 50	3 25	

2 bills of costs, 50 ea., 1 00; 2 copies of costs, 25 ea., 50	1 50	
1 fi. fa., 40; postage, 6; remanding cause	46	
5,260 words, 5 26; seal, 50; postage, 12	5 88	
3 judges' dockets, 30; judgment for costs, 75	1 05	
Entering decree, 2,290 words	2 29	
Enrolling opinion, 2,970 "	2 97	
		17 40
Bill of cost, 50; copy of costs, 25	75	
Transcript, 79,860 words, 79 86; seal, 50	80 36	
Express charge to Washington	1 00	
		82 11
		$298 07

STATE OF TENNESSEE.

I, Carrick W. Nelson, clerk of the supreme court for the eastern division of said State, do hereby certify that the foregoing is a full, true and perfect copy of the transcript of a record from the chancery court at Benton, recently determined in said supreme court, wherein John Goodman and Y. S. Bledsoe, common school commissioners, were complainants, and The Tennessee Mining Company and Samuel Congdon were respondents, together with the copies of the opinion and decree of the court, of which I am clerk.

Witness Carrick W. Nelson, clerk, at office, in the city of Knoxville, this 29th day of August, A. D. 1859.

[L. s.]

C. W. NELSON, *Clerk.*

STATE OF TENNESSEE.

I, Robert J. McKinney, one of the judges of the supreme court in and for said State, do hereby certify that Carrick W. Nelson, whose name appears to the foregoing certificate, is, and was at the time of signing the same, a clerk of the supreme court for the eastern division of said State, at Knoxville; and that full faith and credit are due to all his official acts, and that said attestation is in due form.

Given under my hand, this 29th day of August, 1859.

ROB'T J. McKINNEY,
Judge, &c.

Clerk's Statement.

In the foregoing transcript there are many apparent errors, but I have endeavored to make a perfect copy of the original, and believe it is so; therefore the errors are not mine, but those of counsel or the clerk of the court below.

Respectfully,

C. W. NELSON,
Cl'k of Supreme Court, Knoxville, Ten.

[L. S.] UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the honorable the Supreme Court of the State of Tennessee, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Tennessee, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit, between John Goodman and Yancey S. Bledsoe, school commissioners of the eighth civil district of Polk county, in the State of Tennessee, complainants, and John Caldwell, James V. Symons, Thomas H. Calloway and Euclud Waterhouse, Samuel Congdon, Charles Congdon and the Tennessee Mining Company, Samuel M. Johnson, John B. Tipton, Thomas C. Lyon, respondents, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Samuel Congdon, Charles Congdon and the Tennessee Mining Company, respondents, as by their complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-eight.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

Allowed by S. NELSON.

Citation.

The United States of America to John Goodman and Yancey S. Bledsoe, common school commissioners of the eighth civil district of Polk county, in the State of Tennessee, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of said State of Tennessee, at Knoxville, wherein Charles Congdon, Samuel Congdon, and The Tennessee Mining Company, impleaded, &c., are the plaintiffs in error, and you are the defendants in error, to show cause, if any there be, why the said judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel Nelson, justice of the said Supreme Court of the United States, on this tenth day of March, in the year of our Lord one thousand eight hundred and fifty-nine.

S. NELSON.

On this 22d day of August, in the year one thousand eight hundred and fifty-nine, personally appeared before me, Richard R. Harris, notary public, Julius E. Raht, the subscriber, and makes oath that he delivered a true copy of the within citation to John Goodman, and also one to Yancey S. Bledsoe, defendants in error, within named, at Ducktown, in Polk county, in the State of Tennessee; that the copy of the citation was delivered to the said Bledsoe on the 28th day of July, 1859, and the copy to the said Goodman on the 29th day of July, 1859.

Affiant further states that at the time of delivering said copies to the said defendants, he showed, and also read to them, respectively, this the original citation.

J. E. RAHT.

Sworn to and subscribed before me by the above affiant, J. E. Raht, this 22d day of August, 1859.

In testimony whereof I have hereunto set my name, and affixed my notarial seal, at office in Cleveland, in the State of Tennessee, August 22d, 1859.

[SEAL.]

R. R. HARRIS,
Notary Public.

Fee $1 00, paid by S. Congdon.

Bond on Appeal.

Know all men by these presents that we, Charles Congdon, Samuel Congdon, The Tennessee Mining Company, James A. Alex-

ander, of 62 Wall street, New York, and William Hickok, 187 Greenwich street, New York, are held and bound unto John Goodman and Yancey S. Bledsoe, common school commissioners of the eighth civil district of Polk county, Tennessee, in the full and just sum of five hundred dollars, to be paid to the said John Goodman and Yancey S. Bledsoe, commissioners as aforesaid, their certain attorney, successors in office, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, jointly and severally by these presents. Sealed with our seals and dated the ninth day of March, in the year of our Lord one thousand eight hundred and fifty-nine.

Whereas lately at a supreme court begun and held for the eastern division of Tennessee, at Knoxville, in a suit depending in said court between John Goodman and Yancey S. Bledsoe, common school commissioners in and for the eighth district of the county of Polk, plaintiffs, and Charles Congdon, Samuel Congdon, and The Tennessee Mining Company and others, defendants, final judgment was rendered against the said defendants, and the said Charles Congdon, Samuel Congdon, and The Tennessee Mining Company having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said John Goodman and Yancey S. Bledsoe, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington, the first Monday of December next:

Now the condition of this obligation is such, that if the said Charles Congdon, Samuel Congdon, The Tennessee Mining Company, shall prosecute their writ to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

CHARLES CONGDON. [L. S.]
THE TENNESSEE MINING CO., [L. S.]
Per CHARLES CONGDON, *Treasurer.*
SAMUEL CONGDON, [L. S.]
JAS. A. ALEXANDER, [L. S.]
WM. HICKOK. [L. S.]

Sealed and delivered in the presence of—
GEO. W. MORELL.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

James A. Alexander, of Jersey City, in the State of New Jersey, and William Hickok, of Essex county, in the State of New Jersey, being duly sworn, do depose and say, and each for himself says, that he is a citizen of the United States, and that he is worth the sum of one thousand dollars over and above all his just debts and

liabilities, and property by law exempt from levy and sale by execution.

JAS. A. ALEXANDER,
WM. HICKOK.

Subscribed and sworn this 9th day of March, 1859, before me.

GEO. W. MORELL,
U. S. Comm'r South. Dist. New York.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Be it remembered that on this 9th day of March, A. D. 1859, personally appeared James A. Alexander, Charles Congdon, Samuel Congdon, and William Hickok, to me known to be the same persons who are described in, and who executed, the foregoing instrument, and they severally acknowledged that they executed the same.

GEO. W. MORELL,
U. S. Comm'r South. Dist. New York.

March 10, 1859. Approved.

S. NELSON.

Filed 3d December, 1859.

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SUPREME COURT OF THE UNITED STATES.

No. 19, D. T., 1862.

CHARLES CONGDON, SAMUEL CONGDON, AND THE TENNESSEE MINING COMPANY, AND OTHERS, PLAINTIFFS IN ERROR.

vs.

JOHN GOODMAN AND YANCEY S. BLEDSOE, SCHOOL COMMISSIONERS, &c.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

SUPREME COURT OF THE UNITED STATES.

No. 19, D. T., 1862.

CHARLES CONGDON, SAMUEL CONGDON, AND THE TENNESSEE MINING COMPANY, AND OTHERS, PLAINTIFFS IN ERROR.

vs.

JOHN GOODMAN AND YANCEY S. BLEDSOE, SCHOOL COMMISSIONERS, &c.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

By an act of Congress, approved on the 18th April, 1806, 2 U. S. Statutes at Large, 381, and an act of the Legislature of Tennessee, passed on the 6th day of September, 1806, 1 Scott's Revisal, 936–939, the United States and the State of Tennessee entered into a compact "to authorize the State of Tennessee to issue grants and perfect titles to certain lands therein described, and to settle the claims to the vacant and unappropriated lands within the same."

By this compact, the territory of the state was partitioned between the two governments, by means of a line running from the place where the eastern or main branch of Elk river intersects the southern boundary of the State, due north to Duck river; thence down Duck river to the military boundary line; thence with that line to the Tennessee river; thence down the Tennessee river to the northern boundary of the State.

In consideration that Tennessee agreed and declared that all her right, title, and claim to the lands lying west and south of

this line, known in the Tennessee laws as the "Congressional Reservation Line," should forever cease; and that the lands aforesaid should be and remain at the sole and entire disposition of the United States, and should be exempt from every disposition or tax made by order, or under the authority of Tennessee, while the same remained the property of the United States, and for the term of five years after it should be sold. The United States ceded and conveyed to Tennessee, all their right, title and claim to the territory of the lands lying east and north of the said line, subject among others, to this condition:

That Tennessee, in issuing grants and perfecting titles, should locate 640 acres in each six miles square in the ceded territory, where existing claims would allow the same, "Which," says the compact, "shall be appropriated for the use of schools for the instruction of children forever."

Accordingly, by the Tennessee act of 1806, ch. 1, § 6, 1 Scott, 889, after ascertaining the private claims entitled to satisfaction out of said lands, the principal surveyor was directed to cause to be laid off and surveyed, with plain marked lines, 640 acres in one or more tracts, fit for cultivation and improvement, as near the centre of each section as existing claims and the quality of the lands would admit, "which shall be appropriated for the use of schools for the instruction of children forever, agreeably to the provisions of the before recited act of Congress," 1 Scott, 892.

Provision was afterwards made for the issuance of grants for these lands, which grants, it was declared, should be "effectual to vest the titles to said lands, for the use of schools forever against any grant issued against the State of Tennessee." 1817, c., 125, § 9; 1819, c., 66, 2 Scott, 387, 520.

In anticipation of the ratification of the treaty with the Cherokees, of 1817, the Legislature of Tennessee directed, that, as soon as the treaty should be ratified, the surveyor should proceed to lay off the proper number of acres of school lands in that part of Bledsoe county, in which the Indian title had lately been extinguished. (2 Scott, 439.)

So, in 1819, the Cherokee title to the district between the Tennessee and Hiwassee rivers, known as the "Hiwassee District," having been extinguished by the treaty of that year, the

surveyor was directed to lay off and distinguish, not only on his general plan, but likewise on his own maps of townships, the 16th section of every township for the use of schools. (2 Scott, 508, act of 1819, c. 59, 51.

By repeated acts of legislation, (1811, c. 123, 1813, c. 116; 1817, c. 125; 1819, c. 75, and 1820, c. 23,) provision was made for leasing these school lands, and applying the issues to the use of schools. (2 Scott, 74, 169, 385, 550, 639.)

But this policy was abandoned by the act of 1825, c. 85, entitled, "An act to provide for the sale of the lands, which have been reserved for the use of common schools, and apportion the moneys equally amongst the several counties of the State." Pamphlet acts of 1825, p. 142. By the first section, it was enacted—"That the several tracts of land, assigned and laid off for the benefit of common schools in this State, be, and the same are hereby required to be sold in the manner herein directed." The sale was to be made by the treasurers of West and East Tennessee. Being about to carry this authority into execution, injunctions were obtained to prohibit the sales in West Tennessee, upon a bill filed in the Circuit Court of Bedford county, against the treasurer of West Tennessee, and in East Tennessee, upon a bill filed in the Chancery Court at Madisonville, against the treasurer of East Tennessee. This latter bill was dismissed by the Chancellor, upon demurrer, and the case was carried to the Supreme Court of the State at Knoxville. It was tried in July, 1831, and the Court, by Judge Cotson, who delivered its opinion, held, that the act of 1825, clearly violates the obligation, imposed by the compact of 1806, upon the State of Tennessee; and that the act, so far as it orders the school sections to be divided, sold and granted to purchasers, is unconstitutional and void. Lowry and others *v.* Miller Francis, treasurer, &c., 2 Yerger, 534.

The case against the treasurer of West Tennessee, received the same decision, as we learn from the act of 1831, c. 15, § 14, which made provision for paying the cost of the said suit, "which said suit," says the section, "has lately been determined in the Supreme Court of this State, in favor of the township where said land lies."

And, thereupon the Legislature, by this last mentioned act,

returned again to the policy of leasing the school lands, and directed—"That whenever a sufficient fund may be received, arising from the proceeds of any tract of school lands," the Commissioners should "cause to be built a good and convenient school house, on some part of the township, in which a common English school may be taught," &c.

Thus stood the law of Tennessee when the Ocoee district, then lately acquired from the Cherokees, was brought into market by the act of 1837, c. 2. This law directed the surveyor to set apart the 16th section in each township for the use of schools; and accordingly, the 16th section of fractional township 4 south, range 5, east of the basis line in Ocoee District, was designated as a school section.

And this section is the subject of the dispute in this case.

By an act of Congress, approved Feb. 15, 1843, the Legislatures of Illinois, Arkansas, Louisiana, and Tennessee, were "authorized to provide by law for the sale and conveyance in fee simple of all or any part of the lands heretofore reserved and appropriated by Congress for the use of schools within said States, and to invest the money arising from the sales thereof, in some productive fund, the proceeds of which shall be forever applied, under the direction of said Legislatures, to the use and support of schools within the several townships and districts of country, for which they were originally reserved and set apart, and for no other purpose whatever." But no part of the said land was to be sold "without the consent of the inhabitants of such township or district, to be obtained in such manner as the Legislatures of said States shall direct."

And said Legislatures were also authorized "to provide by law, if not deemed expedient to sell, for leasing the same for any term not to exceed four years." 5 U. S. Statutes at Large, 600, 601.

By an act of the Legislature of Tennessee, passed on the 15th of January, 1844, provision was made to obtain the consent of the citizens residing in each township in the State, owning school lands, for the sale of the same, by means of an election, to be held in each township by the commissioners of school lands residing in the township; and if none resided therein, then by any justice of the county. At this election,

"every citizen qualified to vote for members of the General Assembly shall have the right to vote in his respective township." And if a majority voted for a sale, provision was made for an order of sale, &c., by the Circuit Court of the county. Pamphlet Acts, 1843–4, p. 122.

This act was amended in several particulars, by an act passed January 23, 1846; and, among the amendments, was this: That in case a majority of voters in a township failed to vote for or against a sale; or, in case the person appointed to hold the election failed or refused to do so, then, the County Court was authorized to appoint some suitable person to ascertain the sense of the voters in reference to a sale of the lands, by presenting to each voter, for his signature, a paper expressing, by a suitable heading, that the signer was for or against a sale. Pamphlet Acts, 1846, p. 188-190, c. 121, § 9.

After these laws had been passed, it was discovered, chiefly through the instrumentality of John Caldwell, that there was a copper mine on this school land; and thereupon the Legislature, by an act passed February 4, 1850, provided:

"That the common school commissioners in the county of Polk be authorized to lease, for mining purposes, any school lands unsold in said county; and said commissioners may make such leases, as in their judgment will be most conducive to the interest of the common schools in the said county of Polk." 1849-50, c. 181, § 5. Pamphlet Acts, p. 393, 394.

The county courts of Tennessee sit on the first Monday of every month, and the first Monday of February, 1850, was the 4th day of the month; so that the County Court of Polk county was, or should have been, in session, the same day, on which the act of Assembly last mentioned was passed.

We have, in the present record, an extract from the records of the County Court of Polk county, in the following words:

"County Court, February term, 1850.

A return of an election in the 4th F. T., range 5, East basis line, Ocoee district, for and against the sale of the school land, was received by the Court, and it appears to have failed to decide either for or against the sale of said land; whereupon the Court proceeded to appoint William Conner as a commissioner,

to individually receive the vote of the 4th fr. town., range 5, East basis, relative to the sale of said land." Record, p. 65. See Act of 1845–6, c. 121, § 9.

This is the only evidence in the record that an election was held, in the manner pointed out by Acts 1843–4, c. 104, and 1845–6, c. 121. But in the pleadings it is admitted that such an election had been held.

The Circuit Court of Polk county had a term, commencing on the 2d Monday of February, 1850, which Monday was, in that year, the 11th day of the month.

On the 13th of February, 1850, Conner returned the paper, containing the signatures of the voters of the township, to the clerk of the Circuit Court, signed by him and certified under oath, as is required by the 9th section of the Act of 1845–6. Record, pp. 61, 62.

And thereupon, the Circuit Court immediately decreed that the clerk should sell the land, "as the acts of the General Assembly, in such case made and provided, direct; and that he should notify the County Court at its first quarterly session, that they might appoint commissioners to value said lands," &c. Record, p. 62. Of this appointment we have the following evidence in the record:

"April Session, 1850.

John Kirby, Henry Baker, and Johnston Suit, were appointed Commissioners to value the school land, range 5 E., B., O. D., 4th Fr. T. Sc." Record, p. 65. Sec. 1843–4, c. 104, §15.

On the 3d of May, 1850, said commissioners reported their valuation to the Clerk of the Circuit Court. Record, pp. 62, 63. And thereupon, the clerk advertised that he would sell the land on the 26th of July, 1850. Record, p. 63.

On the 21st of May, 1850, the School Commissioners for the civil district of Polk County, in which the land in dispute lies, granted a lease of it for ninety-nine years, to James V. Symons and John Caldwell, giving them mining privileges in the land for said period, they covenanting to pay the School Commissioners of the township "7 per cent. of the net proceeds of all mineral and fossil substances, mined or quarried, in or upon the section." Record, p. 69; also, pp. 2 and 48.

On the 29th of June, 1850, Symons & Caldwell filed their

bill in the Chancery Court, at Athens, Tennessee, against the School Commissioners, their lessors, and the clerk of the Circuit Court of Polk county, to set up their lease, and enjoin the sale advertised by the clerk. Record, pp. 65, 68.

On the 26th of July, 1850, on which day the clerk had advertised that he would sell the land, he proceeded, though served with the injunction, to sell the land, reserving the interest of Symons & Caldwell; and Euclid Waterhouse, Thomas H. Calloway, Thomas C. Lyon, John B. Tipton and Samuel M. Johnston, became the purchasers, at the price of $1770. All which facts the clerk stated in his answer to Symons & Caldwell's bill, which answer he filed August 19, 1850. Record, pp. 70, 71.

On the 17th of October, 1850, the clerk reported the sale to the Court; and it was thereupon ordered by the Court, that, because the injunction had been served on the clerk, and the extent of it was unknown to the Court, "all further action be suspended in relation to said sale of said lands, until some further order of the Court." Record, p. 64.

On the 22d of January, 1851, Denton & Dugger, two of the School Commissioners, who joined in the lease to Symons & Caldwell, filed their answer to the bill, stating that in the early part of February, 1850, Symons & Caldwell "came to Ducktown, and proceeded to examine the school lands, and report on the same. A public meeting was called, and the people were informed that a vein or lead of copper traversed a cut through the school section, near its centre. This report was published to all present, and an agreement was entered into, that if Caldwell & Symons would procure the passage of a law authorizing the Commissioners to give a mining lease, they should have a lease at six per cent. of net proceeds." Caldwell, accordingly, went to Nashville, and obtained the passage of the law under which the lease was given. After the rumor became public that the land contained copper, one of the respondents was informed that seven per cent. would be given by another party, and when the contract with Symons & Caldwell came to be closed, seven per cent. was inserted. Record, pp. 72, 73.

On the 18th of February, 1851, Caldwell & Symons filed their amended bill against the same parties, made defendants to

the original bill, and making the purchasers at the clerk's sale parties, and also Conner, who had taken the vote of the people of the township for and against the sale; and praying an injunction to prohibit the Circuit Court from confirming the sale, and that the same should be set aside, &c. Record, 73, 80.

On the ninth of June, 1851, Caldwell & Symons assigned their lease to Samuel Congdon, agent for Charles Congdon and associates, of New York. Record, 56, 57.

To the original and this amended bill an answer was filed by Leming, one of the school commissioners, who made the lease to Caldwell & Symons, on the 13th August, 1851; Record, 80–83: by Smith, clerk of the Circuit Court, on the 19th of August; by Tipton, Waterhouse, Johnston, and Callaway, four of the purchasers at the clerk's sale, on the 21st of August, and by Dugger and Denton, the other two school commissioners, who made the lease, on the 29th of August Record, 84–90.

Dugger & Denton say, at the close of their answer, "that the lease was made at the time charged, and shown in the exhibits; that it was done with a full, fair understanding between the parties, with a view to benefit the children of the township. They believe it would be a beneficial arrangement, and remain fully convinced of that fact." Record, 87.

On the 17th September, 1851, the purchasers, on leave of the Court, filed their cross-bill against Caldwell & Symons, and Samuel Congdon, impeaching the lease, on the ground that it was unauthorized by law, fraudulent, and void, and asking for an injunction to prohibit Caldwell & Symons from working or mining on the land, &c.; that the lease be declared void, and the bill dismissed. Record, 91–96.

In the same, or the next month, October, 1851, the purchasers sold their interest in the land to Samuel Congdon, agent of Charles Congdon and associates, and assigned to him their "certificate of purchase," for the consideration of $7,500. Record, 37.

The first shaft sunk on the land, for the purpose of testing the value of the copper-mine supposed to be on it, was commenced by Samuel Congdon in the same month of September, 1851. Record. 26.

On the 18th of August, 1852, the original and amended bills,

filed by Caldwell & Symons, and the cross-bill, filed by the purchasers, were dismissed by the respective complainants, at their own costs. Record, 61, 98.

On the 10th of October, 1852, the Circuit Court was moved for a confirmation of the sale made under its authority, and the Court, reciting the dismissal of the bill filed by Caldwell & Symons, and of the cross-bill, and the dissolution of the injunction, ordered that the report of the clerk, spread upon the record at the October term, 1850, be confirmed, and that the parties stand as though the injunction had never issued or been granted." 64–65.

And thus Congdon became the owner of the interest held by Caldwell & Symons under the lease, and of the interest acquired by the purchasers under the sale made by order of the Circuit Court of Polk County.

On the 22d of November, 1852, Charles Congdon, for the consideration of $1,000, assigned the lease to the Tennessee Mining Company, which had been incorporated by the legislature of Tennessee, by an act passed on the 25th February, 1852. Pamphlet Acts of 1851–2, page 546–749. Record, pp. 52–53. And, in the same instrument, he covenanted to convey the land in fee to the Mining Company. Record, 53.

Accordingly, by his deed, dated September 12, 1853, he conveyed the land to the said Company for the consideration of $50,000. Record, 58–60.

For the names of the corporators at the date of the deed, see the Record, 22.

To the Tennessee Mining Company the cost of the land was:

For the lease, to Caldwell & Symons	$1,000 00	
For their reserved interest.....	6,000 00	
For the fee, to the purchasers.....	7,500 00	
Do. purchase money at the sale	1,770 00	
For expenses in perfecting purchase..	307 99	
		$16,577 99

Record, page 30.

This expenditure was hazarded, upon the speculation that the land contained valuable copper deposites; for it was not till Samuel Congdon had taken the assignment of the lease from Caldwell & Symons in September, ~~1847~~ 1851, that he commenced

the first effectual test of the reality of the mining value of the property, by sinking a shaft. Record 26.

From that time, or at least, from June 1, 1852, to June 30, 1856, the operations of the Company show:

RECEIPTS—from stockholders for instalments on 10,000 shares of stock at $3 50 a share....		$35,000 00
For sales of copper ores to June 30, 1856....		158,019 15
Total.....		$193,019 15
EXPENDITURES—for mining expenses	$129,229 79	
For machinery and implements	984 18	
" buildings.....	7,300 00	
" mules, wagons, &c.....	6,364 42	
" lease of land and title....	16,577 99	
" subscription to Ocoee road	4,000 00	
" carriage and freight of ores	28,409 64	
" discount on draft and sales of ores.....	4,467 80	
" charges on delivery of ores, weighing, &c.....	417 42	
" dividend 1½ dol's on 10,000 shares stock.....	15,000 00	
" cash on hand.....	473 87	
		$213,225 11
Showing a balance of expenditures over receipts of		$20,205 96

Record, 39, 40.

The Company has paid, on orders of the School Commissioners of the township:

To teachers, in the year 1854.....	$1,056 63	
Do. " " 1855.....	1,043 37	
making he sum of.... .. ..$2,100 00 and being 7 per cent. on the sum of $30,000, declared as dividend by the company,—and the only dividends ever declared; for which it took the receipt of the county trustee under the act of 1853–4, c. 303. Record, 29.		

At this point in the history of the case, namely, on the 13th of February, 1856, John Goodman and Yancey S. Bledsoe, School Commissioners of the 8th Civil District of Polk county, filed their bill in the Chancery Court at Benton, against Caldwell & Symons, Samuel Congdon, Charles Congdon and his associates, and Thomas H. Callaway, Euclid Waterhouse and the Tennessee Mining Company; and afterwards, on the 18th of September, 1858, their amended bill against the defendants in the original bill, and John B. Tipton, Samuel M. Johnston and Thomas C. Lyon.

The Bill charges—

I. That the lease to Caldwell & Symons was illegal.

1. Because "the commissioners had no authority in law to execute the same,"—the act of Assembly authorizing it being unconstitutional and void—

1. Because it is a special law.
2. Because the school land did not belong to Tennessee, but to the children of the township; and the legislature of Tennessee had no authority over it, except as specially directed by Congress. Record, 3, 5.

2. Because "it was obtained by Caldwell & Symons through fraudulent representations to the said commissioners as to the true value of the mineral interest in said section." Record 3.

3. Because "the commissioners did not understand the lease. At the time it was executed, they supposed they were getting one-seventh of the proceeds of said mines for the use of the school, instead of the mere pittance of 7 per cent." Record, 3.

4. Because "the lease was executed by the commissioners without consulting the people of the township in regard to the same." Record, 4.

5. Because "the commissioners had no authority to give to

any person any part of the minerals, or the proceeds thereof, from the land." (Record, 5.)

II. That the Tennessee Mining Company took the lease, well knowing its illegality, and the fraudulent manner in which it had been obtained. (Record, 5.)

III. That the sale was illegal.

1. Because "the Court had no right, jurisdiction, or authority to order such a sale." (Record, 7.)

2. Because "it was made contrary to the wishes of the majority of the legal voters of the township." (Record, 7, 13.)

a. Conner's report, that a majority of the legal voters had voted for it, is untrue. In the list of those who voted for the sale, as stated by Conner, there were many persons not entitled to vote;—"some" being free persons of color;
"others," foreigners, not naturalized;
"others," who had been declared infamous;
"many," whose names were placed on the list by the commissioner, without any consultation with them. (Record, 13.)

b. Conner was hired by those who afterwards purchased the land, and are made defendants to the bill, and was paid, either directly or indirectly, by them to make a report favorable to the sale of the land. (Record, 13.)

c. Those purchasers "hired, or otherwise influenced persons —not to vote" against the sale;
"not to bid against them at the sale." (Record, 13.)

IV. That Samuel Congdon acted as agent of Charles Congdon in the purchase of the land, and had full knowledge of the fraudulent manner in which the vote of the township had been

procured and brought about, and of the fraudulent character of the commissioner's report, and also knew that the title to the land would be litigated and contested. (Record, 14.)

The following interrogatories are propounded to the "respondents," by whom the bill appears to mean the purchasers:

1. "How much money or property they paid out, or how much credit they may have given to parties already indebted to them, for the purpose of procuring the votes of the people *for* the sale of the School land as aforesaid?" (Record, 15.)
2. "To whom said payments were made, or credits given? (Record, 15.)
3. "How much money was paid by them, or agreed to be paid, to hire persons not to vote *against* the sale? (Record, 15.)
4. "How much they paid, or agreed to pay, the said Commissioner, William S. Conner, for his services in making the report aforesaid, and procuring said vote?" (Record, 15.)
5. "How much money was paid, or agreed to be paid, and to whom, to hire persons not to bid against him at the sale of said land?" (Record, 15.)
5. "When said purchase was made?" (Record, 14.)
7. "And at what price?" (Record, 14.)
8. "How the same was paid?" (Record, 14.)
9. "What representations they, or either of them made to the said Charles Congdon, or his agent, Samuel Congdon, in regard to the manner in which said sale had been brought about, and as to the manner in which they obtained the interest which they professed to sell to the said Charles Congdon?" (Record, 14–15.)
10. "What representations they may have made to the said Samuel Congdon, of the probability of there being litigation about the title to said land?" (Record, 15.)
11. The amount and value of all the ores taken and shipped

from said mines, from the date of said lease up to the present time?" (Record, 8.)

12. "When said ores were sold, and to whom, and at what price, and the cost of raising and transportation?" (Record, 6.)

11. "The entire net profits of working said mines from the commencement up the present time?" (Record, 8.)

14. "How much of the proceeds of said mines have been expended in building or making roads, and erecting a smelting furnace, and other buildings, and how the same has been charged in the books of said company?" (Record, 8.)

The Bill prayed—

1. "That the lease to Caldwell & Symons be declared null and void." (Record, 15.)

2. "That the sale be declared null and void, and all right and title be divested out of the purchasers." (Record, 15.)

3. "That the entire fee simple title to said lands be declared in the children of the township, as it originally was before the execution of the lease, or before the sale of the same." (Record, 15.)

4. "That the defendants produce all the books, accounts, and vouchers, and show a full, fair, complete, and perfect statement of all the transactions of said company from its organization up to the present time." (Record, 8.)

Answers.

1. As to the Lease.

Caldwell says, that about the year 1849 he made some search for minerals in Ducktown, and discovered sufficient indications on the property known as the School Section, to induce further labor and development. He and Symons, who professed

to be a Cornwall miner, believed that the indications on the surface were favorable to copper ore; they were willing to work and spend money in making the test. They called a public meeting of the citizens of Ducktown, and Caldwell made a speech to them, giving his views of the whole case, explaining the subject as well as he could, and tried to convince them that there was wealth in their mountains, and particularly on the school property. He told them that the property ought to be leased and tested, and developed; that a fund might be created without any expense to the township; and, in short, did everything in his power to convince them that their property was valuable, but he did not know that copper was actually there, as no test had been made. The Ducktown district is surrounded by mountains, is remote from the more thickly settled portions of the country, and at that time was almost inaccessible. It had very little intercourse with the rest of the world, and scarcely any educational advantages. There being no one competent to give a satisfactory lease upon the section, Caldwell went to Nashville and had the provision drafted, which became a law on the 4th of February, 1850. On his return, he found that the preliminary steps had been taken, and that, at the February term, 1850, of Polk circuit court, an order had been passed, for the sale of the section. This had required a vote or census of the district to be taken, and as they had voted to sell, and the order had been obtained to that effect, he, without further inquiry, considered that his project had failed, and returned home. He learned, afterwards, that an election had been held for commissioners, in the district, and that the commissioners elect would probably favor a leasing of the section for mining purposes, whereupon, he returned to Ducktown, and on the 21st of May, 1850, procured the instrument of lease set forth, in substance, in the original bill. (Record, 44, 45.)

Samuel Congdon says, he had never been in Tennessee before October, 1850; and "expressly denies that he had any knowledge or information of the lease until long after it was taken, nor until after the decree of the Circuit Court of Polk county, for the sale of the land;" that "Charles Congdon, for whom he acted, lived in New York, and never was in the Ducktown

region until the winter of 1854–'55, and neither knew or had information of any of the fraudulent acts charged;" nor had he, S. Congdon, at the time of his purchase of the lease, any knowledge or information of the alleged fraud and devices used to procure the lease; nor that there would be, or was likely to be, any litigation as to the title of the lease. (Record 23, 25)

2. As to the Sale.

The PURCHASERS answer the interrogatories as follows:

1, 2. They neither paid money or property, or gave credit to any person for the purpose of procuring and influencing the vote of the people, for the sale of the school land. (Record, 38, 47.)

3. They desired that the school land should be brought to sale in a legal and fair mode, and intended to purchase it if not sold for more than they believed a fair sum; and respondent Calloway agreed to pay one William Mills for any time he might lose in speaking to the people to try and have an election held for the sale of the land,—but, not for using any influence in any election held, for the purpose of procuring votes for or against the sale, but simply for the purpose of using fair and honorable means to bring about an election. The record shows an election was held, and failed to decide for or against a sale. The County Court then appointed Connor commissioner. With said appointment and all proceedings under it, they had nothing to do, nor paid money on account of it, nor did any of the acts charged. (Record 36, 38.)

4. They neither paid nor agreed to pay William S. Conner for his services in making the report, or return for the sale of the school land, or procuring the votes for said sale. (Record, 38, 47.)

5. They deny that they either hired, or otherwise influenced other persons not to bid against them at the sale of said

school land, nor paid any money, or agreed to pay any, for such purpose. (Record, 38, 47.)

6, 7, 8. The purchase was made July 26, 1850, at the price of $1,770, one-eighth of which was paid down, and bond executed for the remainder, as required by law. (Record, 37.)

9. They made no representations to said Charles Congdon, or his agent, in regard to the manner in which they acquired the interest which they proposed to sell. (Record, 38, 47.)

10. Nor did they make any representations to Samuel Congdon, as to the probability of there being litigation about the title to the lands, sold by them to him as agent as aforesaid. (Record, 38.)

As to the matter of account, Congdon answers as follows:

11. The gross value of the ores taken from the mine to June 30, 1856, was $158,019.50. (Record, 29, 30.)

12. Said ores were sold in Baltimore, New Haven, and England, at four and five dollars each, one per cent., to various purchasers, whom respondent cannot now recollect. The cost of mining, labor, materials, supplies, transportation to market, were kept together, and amounted to the sum of $162,905.58. (Record, 30.)

13. On the 30th of June, 1856, the capital stock paid in, receipts from ores, and the debt of the company, amounted, in the aggregate, to $213,606.32; and the company had expended all the capital stock, all the proceeds derived from the the sales of ores, and were in arrear in the sum of $20,587.17. (Record, 30.)

14. The company paid $4,000 towards opening a road from Ducktown down the Ocoee, a distance of twenty miles,—the whole sum expended on said road being $28,000,—all of which

was paid by seven mining companies, except a private subscription of $1,200 or $1,500. (Record, 24.)

15. It is untrue that the Tennessee Mining Company have any interest, or have expended one dime, in the smelting works erected at Ducktown—said work being a private enterprise. (Record, 24.)

Evidence.

Eighteen depositions were taken in the case, all of them by the complainants; and all of the witnesses, except two, McJunkin and Mills, were citizens of the township. Eight of those citizens, examined as witnesses, voted for the sale, five against it, and three did not vote at all.

There is a complete failure of evidence, of misrepresentation or other fraud, by Caldwell and Symons, in obtaining the lease.

So there is no evidence of bribery or other undue influences by the purchasers to procure the votes of the people of the township for a sale of the land.

There is testimony that four inhabitants of the township, named Carter, who voted for the sale, were of mixed negro or Indian blood; but they had been habitually permitted to vote in other elections in the township, or in the general elections.

Some three or four of those who voted for the sale were supposed, by some of the witnesses, not to be residents of the township; but there were, at one place, two township lines, the precise locality of which was not distinctly known, in the vicinity of which these supposed non-residents lived; and, besides, the depositions were taken seven years after the sale, and the residence of the voters was imperfectly remembered, some or all of them being renters of land and frequently changing their residence.

One of the voters for the sale, named Nash, was of Irish birth, and possibly a minor at the date of the vote; and another, named Miller, had been, as one witness stated, a con-

vict in the penitentiary of Georgia, and had not been restored to citizenship.

ARGUMENT.

The first law passed by Tennessee for renting the school lands, —1811, c. 123, 2 Scott, 74,—directed that the leases should be "for the term of *one* year." The next law,—1813, c. 116, § 2, 2 Scott, 170,—authorized the lease "for any term not exceeding *five* years." Next, by the act of 1817, c. 125, § 1, 2 Scott, 385, it was made the duty of the commissioners "to lease out such lands upon the best terms they can." These words did not, probably, change the length of the term. Be that as it may, after the decision that the State could not sell the land, in the manner directed by the act of 1825, c. 85, the Legislature, by the act of 1831, c. 15, § 1, again directed that the commissioners should lease the land "for a term not exceeding *five* years." And by this law, the school lands were managed till the act of Congress of 1843,—Sess. 3, c. 33,—5 Stat. at Large 600, 601,—was passed, and the consequent Tennessee act of 1843-4, c. 104, Pamphlet Acts, p. 122. This act of Congress, as we have seen, authorized the sale of the lands; but it also authorized the Legislatures of the States mentioned, "to provide by law, if not deemed expedient to sell, for leasing the same for any term not exceeding *four* years." And, if the State of Tennessee has no authority to lease but this, it follows that the lease to Caldwell & Symons, for 99 years, is void, at least, for all the term but four years.

But we insist that the power of Tennessee to "employ this land" for the use of schools for the instruction of children forever," is not subject to any control from Congress, nor to any other control, but what shall proceed from her own, or the Federal judiciary.

The compact of 1806, totally exhausted the powers of Congress, and, at the same time, affixed to the powers of Tennessee, limits, the precise extent of which can be defined alone by judicial exposition.

"The United States ceded and conveyed to Tennessee all their rights, title, and claim to the territory of the land lying east and north of the said (Congressional reservation) line,"—subject to the condition that Tennessee should "locate 640 acres in each six miles square in the ceded territory," for the use of schools.

Tennessee enacted, in her part of the compact, that this cession and conveyance "is hereby accepted, ratified, and confirmed to all intents and purposes."

The words by which the cession and conveyance are made, are the words of the United States. Those by which the cession and conveyance are accepted, ratified and confirmed, are the words of Tennessee.

Thus, the United States divest themselves of "all right, title, and claim to this land," and this right, title, and claim becomes invested in Tennessee, which assumes the duty of locating 640 acres in each six miles square; after which, immediately follows the stipulation, being the words of both parties to the compact—"which shall be appropriated for the use of schools for the instruction of children forever."

In Jackson *v.* Wilcox, 13 Peters, 498, this Court says: "Appropriation is nothing more nor less than setting apart the thing for some particular use." And, "whenever a tract of land shall have once been legally appropriated to any purpose, from that moment, the land thus appropriated becomes severed from the mass of public lands; and no subsequent law, or proclamation, or sale, would be construed to embrace it, or to operate upon it; although no reservation were made of it," in such law, proclamation, or sale. (13 Peters, 512, 513.)

By the North Carolina Cession Act, the Senators of that State in Congress were "authorized, empowered, and required to execute a deed or deeds, on the part and behalf of this State, conveying to the United States of America, all right, title, and claim which this State has to the sovereignty and territory of the lands situated within the chartered limits of this State, west of a line beginning," &c. The deed executed by the Senators, under this authority, on the 25th of February, 1790, uses the language: We "do, by these presents, convey, assign, transfer, and set over unto the United States of America, for the benefit of the said States, North Carolina inclusive, all right, title, and claim, which the said State hath to the sovereignty and territory of the lands," &c.

After this, North Carolina had no further power of disposition over this territory. The same words, which divested North

Carolina of the power of disposition, must equally put an end to the authority of the United States, when used by them.

But if this were not so, it would be hard to make out, after the appropriation of the particular land in question, by the compact of 1806, and Tennessee's act of location, that the United States are still invested with such a power of disposition, or that Congress can confer upon the State the authority to sell, or to lease, and if leasing be resorted to, that Congress can limit the term for which the State shall grant the lease.

If Congress can delegate to the State power to sell, it must be because the power to sell remains in Congress. But what words of the compact reserve this power? The 640 acres in each six miles square are not excepted out of the territory ceded and conveyed to Tennessee. Those tracts are not reserved or retained by the United States in the same manner as the land west and south of the line described in the act of cession. The act of cession appropriates 640 acres in each six miles square, where existing claims will allow the same, to the use of schools, and cedes and conveys the entire territory to Tennessee, subject to that appropriation, and Tennessee accepts the conveyance *cum onere*.

The people, who purchase from Tennessee the adjacent lands, are entitled to these tracts for the education of their children; or, the children themselves are vested with the right to have them set apart for their instruction, just as purchasers of lots in town sites are entitled to the enjoyment of the alleys, streets, squares, promenades and wharfs, which are represented on the plot exhibited on the day of sale.

Neither the United States, nor Tennessee, nor the township people of to-day can annul this appropriation; but it must remain "for the use of schools for the instruction of children forever." It is subject to no legislative action, except on the part of Tennessee, the holder of the legal title; and such action as she can take, can be only that which contemplates the making of the appropriation useful for the instruction of children, from day to day, "forever." If she adopts any legislative measure, which contemplates more or less than this, the children of the township will never be unredressed in this Court. May this Court, therefore, be perpetual! *Esto perpetua!*

The children of the township, a thousand generations hence, may just as rightfully demand that this land shall be employed under the authority of Tennessee, "for the use of schools," for their instruction, as the children of the present or any past generation. And how the United States, which "ceded and conveyed *all* their right, title, and claim" to this land, having first appropriated it for the use of schools forever; or, how Tennessee, which accepted the cession and conveyance just as it had been made, can now claim to interfere with appropriation, and change the form of the thing appropriated, passes comprehension, unless it can be shown that the United States reserved some power of disposition, or vested Tennessee with some power to make such change.

Neither of these things can be shown. The conveyance by the United States to Tennessee is absolute, and is a divestiture of all *jus in re* or *jus ad rem*, ever possessed by the United States. The appropriation, for the use of schools for the instruction of children, of 640 acres in each six miles square in the ceded territory, is absolute. Tennessee takes the territory with the promise to locate the land, designate in each six miles square, the exact 640 acres, which had been appropriated, and to hold the land so appropriated, so set apart, and employ it "for the *use* of schools"; that is, *use* it "for the instruction of children," within the six miles square in which it lies—not of one generation, but of all generations, "forever."

And if neither the United States or Tennessee retained any power of annulling this appropriation, how can it be supposed that the citizens of the township, "qualified to vote for members of the General Assembly," can give them, or either of them, such a power? The land was not appropriated for the use of the qualified voters of the township. It was appropriated "for the use of schools for the instruction of children." These children are the beneficiaries; and whatever may be the law in regard to the power of the Court of Chancery to change the form of an infant's property, it is clear that, in a case of this kind, the power can never be exerted, even by a Court of Chancery, because this property does not belong to any specific infants, but to all the children who shall reside in the township, forever. (1 Spence's Equity, 612, and note *i*, citing McPherson, 287, 297, &c.)

The "qualified voters" of the township, then, had no right to this property; and their consent to a sale does not help to make the sale directed by the act of Congress, and the act of the Legislature of Tennessee, a valid disposition of the property.

It is thus seen that I do not attempt to sustain the sale, although my clients hold under it as well as under the lease.

But though the sale, as I conceive, is invalid, still it does not admit of the slightest doubt but that Tennessee has the power to lease the land. This power, however, is derived from the compact, not from the act of Congress in 1843, and is indeed inherent in the very nature of the *use* to which the United States devoted the land. There is no other method of employing the land, for the use of schools, but as sites for school houses, and to produce, by the cultivation of its surface, or the working of its mines, a fund "for the instruction of children."

Tennessee could, lawfully, direct the land to be leased; and she can, constitutionally, manage the school lands, in which there are mines, by a special law applicable to them alone, or to any particular mine alone, in such manner as to make them best subserve the use to which the lands are appropriated. There is, by the compact, no limit to the discretion of the State, as to the manner in which the lands are to be made to promote the instruction of children. And it is only necessary to read that provision of the Constitution of the State, supposed to prohibit the particular legislation in question, to see that it has no application to this class of cases. (Con. of Ten., Art. 11, §7.)

The lease, in this case, was made lawfully, fairly and honestly, and is a prudent and judicious mode of causing the property to produce a fund for the support of schools in the township.

The interest of the price for which the land sold amounts to the annual sum of $106 20; whereas, the seven per cent. reserved on the lease has amounted to ten times that interest, for each of the two years in which the company were able to declare a dividend.

R. J. Meigs.